Public Utilities

FORTNIGHTLY

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August 31, 1944

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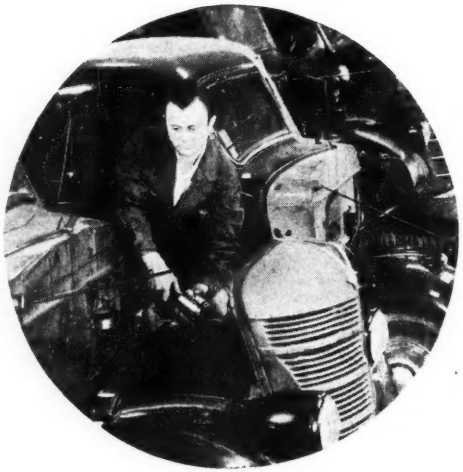

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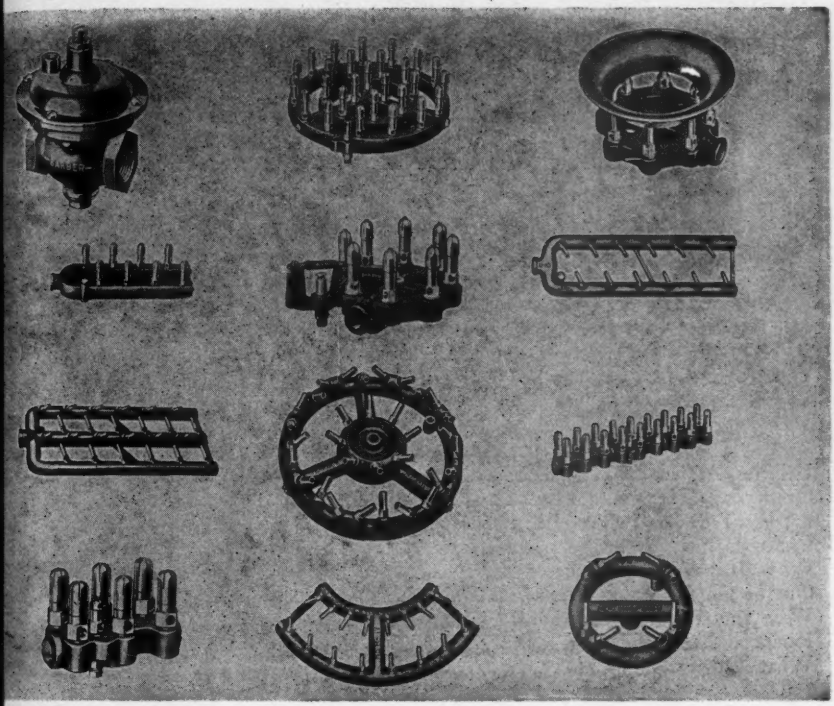

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When the war is over, great opportunities will arise in the gas-burning appliance ld. The use of all types of gas fuel will be extended, and numerous improvements ill be made in gas equipment. Appliance manufacturers, jobbers, dealers, should be anning now for vast consumer demand when the time comes. Also, after two years of strictions, the market for replacements and repairs will be tremendous.

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BARBER BURNERS

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Public Utilities Fortnightly

VOLUME XXXIV *August 31, 1944* NUMBER 5

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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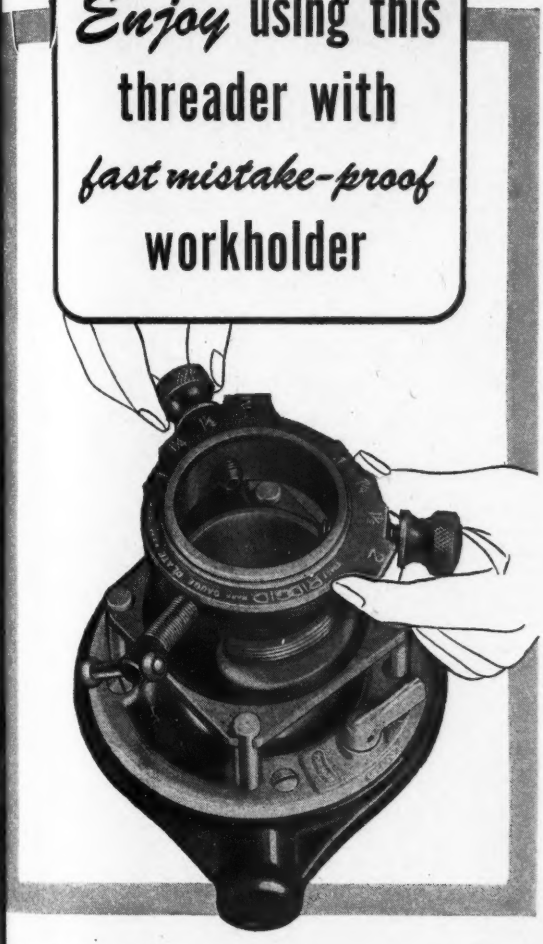

A popular - priced die stock with a popular workholder — it sets to pipe size quickly, correctly — no bushings! Threads smoothly — action is direct, handle to head to chasers; no cockwobbling. Posts carry no load, only taper the threads, are separately replaceable. Rugged steel - and - malleable construction. Perfect threads on 1″ to 2″ pipe, alloy or high-speed steel dies. Ask your Supply House.

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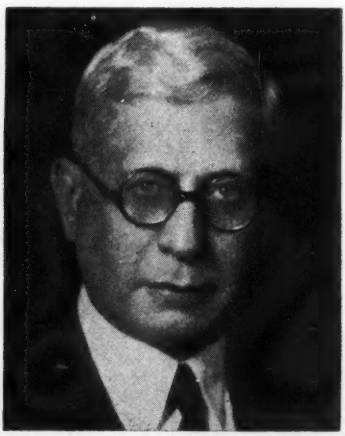
Pages with the Editors

WE seem to be having editorial difficulty in keeping up with the fast-moving Detroit Edison Case. This was the case in which the city of Detroit took the lead in attempting to have Federal excess profits tax payments by Detroit utilities diverted to the benefit of the local citizenry by way of rate reductions. Just to make doubly sure, the city also imposed a city tax for the same purpose—in case the rate reduction should not stick.

WE have endeavored to report, from time to time, the series of resulting events in this important and somewhat unusual situation. But somehow the time lag between closing presses and date of issue always seems to catch us one trick behind. For example, the leading article in this issue, "Passing Taxes on to the Utility Consumer," by A. C. WEBBER, was written at a time when the Michigan Public Service Commission had not yet passed on its second rate investigation of the Detroit Edison Company —the one which resulted from remanded proceedings from the Michigan Supreme Court.

THE latest order in the Detroit Edison Company Case by the Michigan commission directs the company to rebate $10,450,000 to its customers for the year 1944. The rebate does not exhaust all of the company's 1944 liability for Federal excess profits tax, which amounts to approximately $13,112,250. To this extent the commission follows out, in a small way, its earlier-announced interpretation of the Michigan Supreme Court's decision to the effect that the utility's rates need not be cut by the exact amount of the excess profits tax liability. (To wipe out such taxes arbitrarily, said the commission, will result in "great additional burdens" falling on individual taxpayers.) However, the commission's action does take such a big bite out of the amount the company would otherwise pay in excess profits taxes as to make it plain that the commission considers the very existence of excess profits tax liability in any substantial amount as a basis for rate reductions.



A. C. WEBBER

Neither taxpayers nor the utility ratepayers in any one American city are entitled to special subsidy from Federal taxpayers generally.

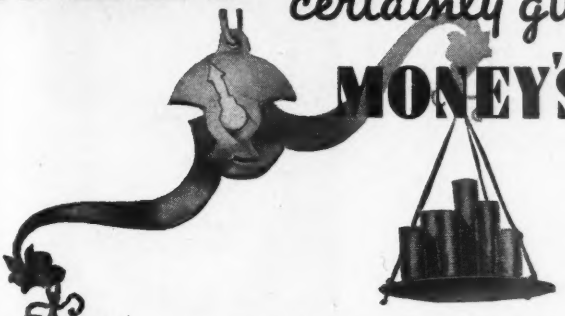
(SEE PAGE 267)

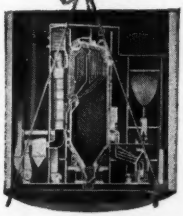
THE commission will probably take similar rate action against other Michigan utilities. The Michigan Bell Telephone Company, the Michigan Consolidated Gas Company, Consumers Power Company, and other smaller companies which are liable for Federal excess profits taxes have been ordered to file not later than September 15th a report on their six months' gross income, excess profits tax liability, and other information, together with an estimate of the full twelve months of 1944. The commission estimates that more than $30,000,000, which Michigan utilities would otherwise set aside this year for Federal tax money, can be returned, in whole or in part, to Michigan ratepayers by way of rebates.

THE commission ordered the rebates in preference to straight rate cuts. The Detroit Edison Company was ordered to submit its "refund or distribution" plan by September 15th for repayment to users by December 31st. The commission also indicated that the adjustment will be continued after the current year if company revenues remain high. The adjustment may be made on a "month-to-month" basis.

THEORETICALLY, this plan would allow the company to reach the end of 1945 with comparatively little liability for excess profits taxes. One confusing feature of the case is the evident assumption of the commission that a concurrent city tax on Detroit Edison is invalid. However, as the company points out, this tax is still in litigation, so that in effect the company is left with three claimants for the same fund—the ratepayers, city of Detroit, and the Federal Treasury. A court appeal is believed likely in view of this situation.

RILEY *certainly gives you your* MONEY'S WORTH





Because of the "plus values" of Riley Steam Generating Units, the Riley Stoker Corporation is justified in stating that "Riley certainly gives you your money's worth." Users almost invariably find that they can comfortably operate their Riley equipment substantially in excess of Riley guarantees both in efficiency and capacity.

The positive, unrestricted circulation and other design characteristics, together with the policy of conservative ratio of heating surfaces and furnace volume, assures the purchaser of Riley Steam Generating Units a definite bonus above guaranteed performance.

EXAMPLES OF PLUS VALUES IN RILEY UNITS

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	Guaranteed Efficiency	Actual Efficiency
Union Electric Co. of Ill., Venice Station	86.4%	88.5%
Carolina Power & Light Co., Cape Fear Station	87.2%	89.1%
Florida Power & Light Co., Ft. Lauderdale Station	88.0%	89.6%
Central Ohio Light & Power Co., Bluffton, Ohio	85.99%	86.54%
Union Public Service Co., Canby, Minn.	85.3%	87.3%
Newport Electric Co., Newport, R. I.	85.8%	86.6%
Scovill Mfg. Co., Waterbury, Conn.	85.8%	87.16%
Winchester Repeating Arms Co., New Haven, Conn.	86.5%	88.56%
Upper Mich. Power & Light Co., Escanaba, Mich.	85.0%	86.3%
Lynn Gas & Electric Co., Lynn, Mass.	86.1%	87.7%
Large Eastern Oil Refinery	83.3%	86.7%
General Analine Works, Rensselaer, N. Y.	86.5%	88.7%

RILEY STOKER CORPORATION, WORCESTER, MASS.

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BOILERS-PULVERIZERS-BURNERS-STOKERS-SUPERHEATERS
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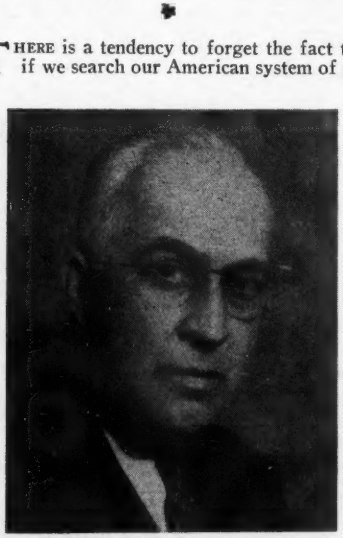
A. C. WEBBER, author of our opening article, dealing with the Detroit Edison situation and its impact on regulation generally, was born in Boston in 1876 and graduated from Boston University Law School (LL B), being admitted to the Massachusetts bar in 1898. He was assistant district attorney for the Suffolk district for a decade, beginning in 1909, during which time he was active in security frauds and stock broker prosecution. He was also active in securing better narcotic control. MR. WEBBER was appointed to the Massachusetts commission in 1932 and served until 1938, being chairman of that board during the year 1937. He was a member of several legislative commissions as well as the appellate tax board of his state. He is perhaps best known in regulatory circles outside of Massachusetts for his authorship of the volume, "Webber on Public Utility Regulation," published by Public Utilities Reports, Inc., in 1941.

R. M. TOWNSEND, author of the article in this issue (beginning page 280) on postwar hydroelectric projects, is a veteran advertising man with experience in various branches of the utility field, including the marketing of electrical goods. MR. TOWNSEND, who now makes his home in Washington, D. C., has had an opportunity for immediate and firsthand investigation of the announced Federal program of postwar irrigation and flood-control projects, with particular attention to the proposed Missouri basin developments.

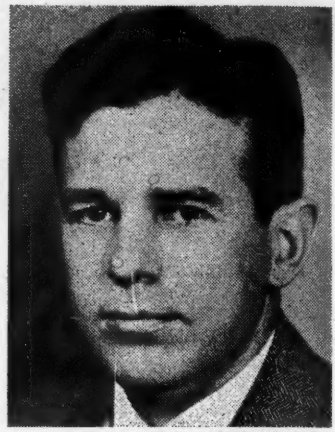
THERE is a tendency to forget the fact that if we search our American system of private enterprise carefully enough, we will find it surprisingly democratic at the bottom. Our largest corporations paradoxically seem to be controlled by a larger number of small investors than our moderate-size concerns are. The comparison is even more remarkable with reference to the controversial "little business" concerns, which are far more likely to be closely held, if actually not "family affairs."



ERNEST R. ABRAMS

For practical democratic control, American business can give aces and spades to the Federal government.

(SEE PAGE 288)



R. M. TOWNSEND

Postwar public works will include dams, but will the dam planning include vision?

(SEE PAGE 280)

IN this issue (beginning page 288) ERNEST R. ABRAMS, well-known New York city financial and utility writer whose articles frequently appear in this magazine, discusses the challenging question of "Who Owns American Enterprise?" It is common enough knowledge, for example, that common shares of the great American Telephone and Telegraph Company are pretty widely held, with large blocks falling few and far between in the great mass of outstanding securities of that gigantic enterprise. But the reader may find some other surprising examples of the real democracy of American enterprise in MR. ABRAMS' discussion.

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

A PETITION for approval of temporary suspension of certain demand provisions in industrial power rates was granted by the Michigan commission. (See page 151.)

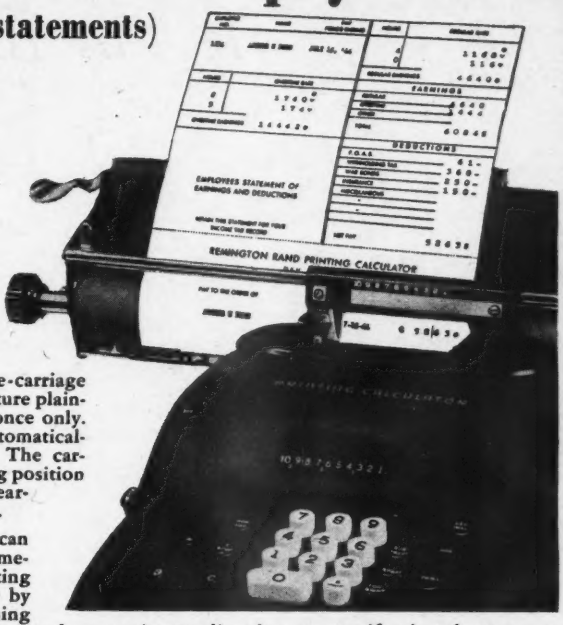
THE next number of this magazine will be out September 14th.

The Editors

This calculator writes pay checks

(and detailed earnings statements)

CLEAR
COMPLETE
ACCURATE
. . . and FAST



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The Printing Calculator is available on WPB approval, to help conserve manpower, expedite war work, maintain necessary civilian economy. Talk it over with our representative.

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In This Issue

In Feature Articles

In Financial News

In What Others Think

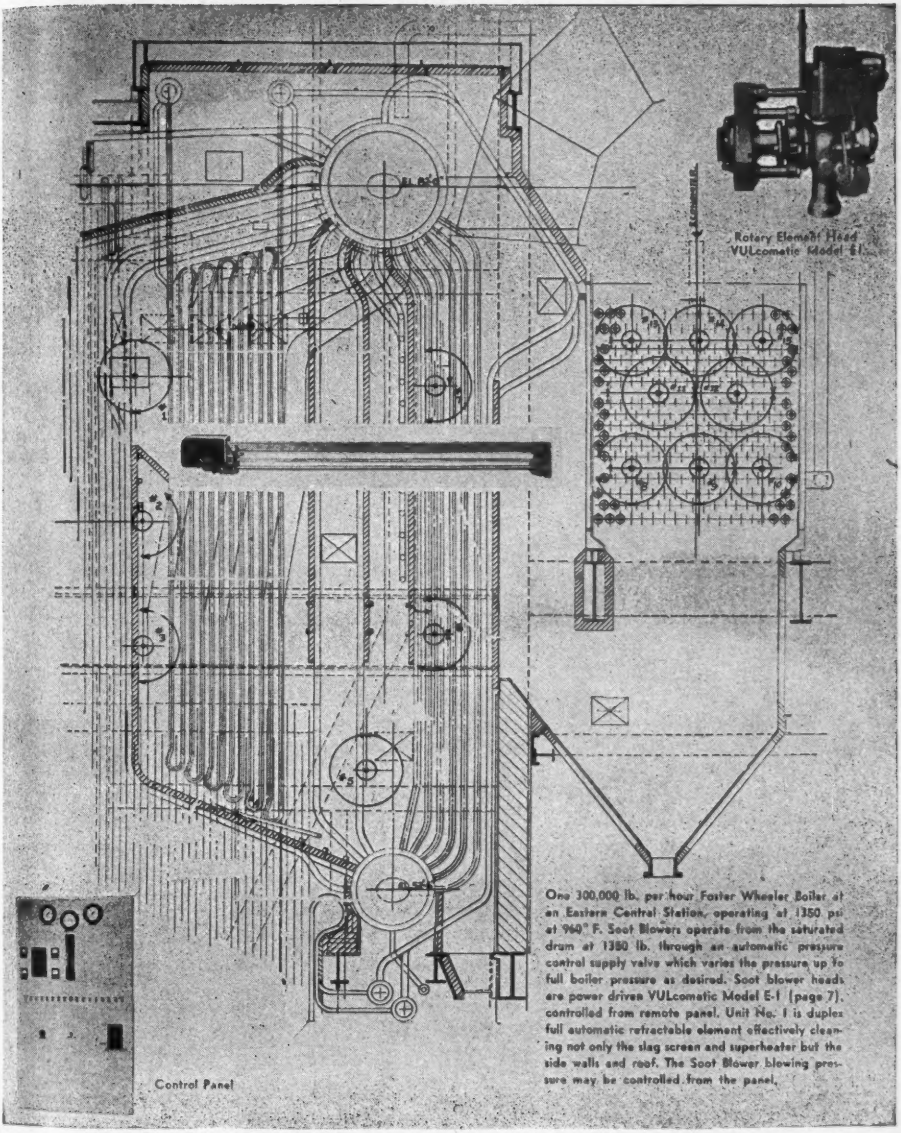
In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 129-192, from 54 PUR(NS)

VULCAN ENGINEERED SOOT BLOWER INSTALLATIONS



One 300,000 lb. per hour Foster Wheeler Boiler at an Eastern Central Station, operating at 1350 psi at 960° F. Soot Blowers operate from the saturated drum at 1380 lb. through an automatic pressure control supply valve which varies the pressure up to full boiler pressure as desired. Soot blower heads are power driven VULcomatic Model E-1 (page 7), controlled from remote panel. Unit No. 1 is duplex full automatic refractable element effectively cleaning not only the slag screen and superheater but the side walls and roof. The Soot Blower blowing pressure may be controlled from the panel.

The new VULCAN catalog fully describing VULCAN equipment appears in the 1944 Sweets, and a copy is available on your request.

VULCAN SOOT BLOWER CORPORATION, DU BOIS, PENNA.

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Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

THOMAS E. DEWEY
Governor of New York.

"This must be a land where every man and woman has a fair chance to work and get ahead. Never again must free Americans face the specter of long-continued, mass unemployment."

GEORGE D. AIKEN
U. S. Senator from Vermont.

"The greatest step which can be taken toward making this land of ours a land of plenty is the establishment of a coördinated transportation system which will include airways, highways, railways, and waterways."

WILLFORD I. KING
Professor, New York University.

"Economists pointed out long ago that prices are the safety valves of our competitive capitalistic system. Regulating prices, like sitting on the safety valve, commonly leads to untoward results."

CLARENCE CANNON
U. S. Representative from Missouri.

"Our national food problem is not scarcity but surpluses. We are shipping more hogs than the packers can process. We are marketing more eggs than the plants can store. We have produced more cattle than we can feed."

MARQUIS CHILDS
Columnist.

"I suppose many people think of Avery [Montgomery Ward & Company president] as a martyr. As for me, I felt sorry for the two soldiers who had to carry him out. Think of getting set to fight Hitler and Hirohito and then finding yourself in a battle with the boss of Montgomery Ward & Company."

WENDELL WILLKIE
Former president, Commonwealth & Southern Corporation.

"Negro leaders are alert and educated and sophisticated. They know that their problem is a part of the world-wide struggle for human freedom. For their people they ask only their rights—rights to which they are entitled. The Constitution does not provide for first-and-second-class citizens."

JAMES M. COX
Ex-governor of Ohio.

"In the first World War we fought for the preservation of democracy. That is what we are striving for now. That is what the boys at the front are fighting for. It is for us, by putting patriotism above politics to demonstrate that democracy can be made to work in war; and then, after peace has come, to work in the adjustments of a lasting peace."

Forcing Europe's Fortress

More than men and machines are meeting the ultimate test on Europe's battlefields. Allied strength, determination and wisdom are on trial. Bitter action is now testing the adequacy of months of patient planning:

Planning that produced planes, ships, shells, tanks, guns and other weapons of war . . . Planning that trained and equipped millions of men in all branches of the service . . . Planning that gathered men, munitions, supplies and food from all over the nation and transported them to the scenes of action . . . Planning that maintains communication lines for supply and reinforcement of troops . . . Planning strategy—time and points of attack, necessary troops, equipment, reserves, supplies, hospital facilities and personnel.

Planning on such a staggering scale involved countless hours of toil, mountains of paper work and literally billions of figures.

To speed this figuring, thousands of Burroughs machines are on the job both at home and overseas, simplifying the work and contributing to accuracy. In war, just as in peace, you find Burroughs machines wherever there is important figure work being done.

NORDEN BOMBSIGHTS—Years of experience in precision manufacturing are enabling Burroughs to produce and deliver the famous Norden bombsight—one of the most precise instruments used in modern warfare.

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FIGURING AND ACCOUNTING MACHINES are also being produced by Burroughs for the Army, Navy, U. S. Government, Lend-Lease and business enterprises whose needs are approved by the War Production Board.

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Burroughs

FIGURING, ACCOUNTING AND STATISTICAL MACHINES • NATIONWIDE MAINTENANCE SERVICE • BUSINESS MACHINE SUPPLIES

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SAMUEL RAYBURN
U. S. Representative from Texas.

"For the boys who come home from the war, no medals, no parades, will express the gratitude of America for what they have done as much as the chance at a job. For those who deserve bonuses we shall provide bonuses. But no dollar bonus within the gift of this rich nation can equal, in their eyes, the great moral bonus of security, of steady employment, and the right to work."

DAVID E. LILIENTHAL
Director, Tennessee Valley Authority.

"TVA takes in about $3,000,000 a month. This revenue does not come from the individual taxpayer. It comes from business which buys electric power. Our maintenance and operating costs come out of this revenue. The surplus that is left after deductions of taxes and operating expense goes back to the stockholders, in this case, the people of the United States."

C. E. CHILD
Member, Transportation Board of Investigation and Research.

"The transportation history of the United States has been a constant struggle for better and more economical transportation, and to eliminate discriminations. The railroads have, from a very early date, considered it to their interest to discriminate in their rates and charges—to charge what they thought the traffic would bear, rather than to make like rates for like services to all customers."

J. CLIFFORD FOLGER
President, Investment Bankers Association of America.

"Some say Washington is becoming the financial center of the world but that should be qualified. New York is the private banking center of the world and should remain so, just as Detroit is the automobile center and Chicago the railroad center. Washington should be the city of umpires. It should send out the reports of good weather for farmers, businessmen, and bankers to plant their crops."

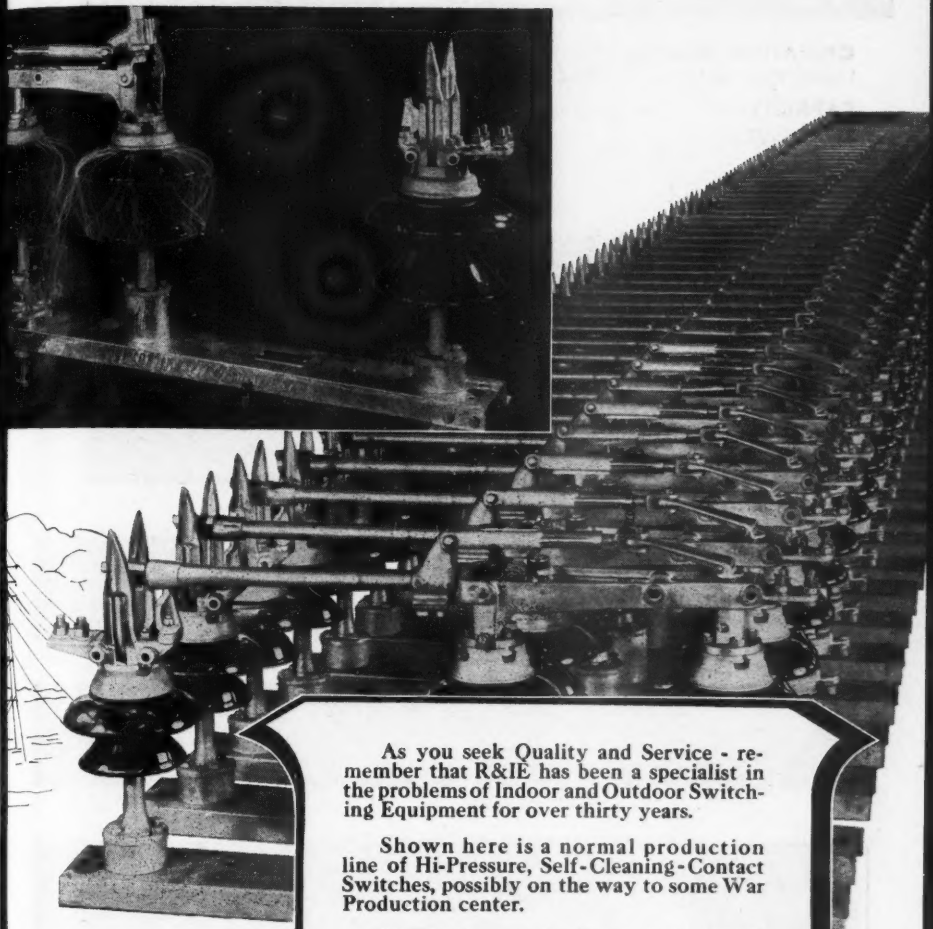
LAURENCE F. WHITTEMORE
Assistant to the president, Boston & Maine Railroad.

"The wonders which the future holds for air transport have been oversold to the American people, though they are tremendous without any doubt. This overselling is particularly true when one considers the claims made for air transport in the field of express and freight shipment . . . there is no indication that air transport does now, or ever will, furnish carriage for commodities as cheaply as some of the older forms of transportation."

FRANK M. FOLSOM
Vice president, Radio Corporation of America.

"Industry's ability to pay off borrowings and to free its own normal working capital for postwar operations is dependent on the degree of care and thoroughness with which contract terminations are handled. In making plans for financing the period of conversion, we should not lose sight of the fact that financing will be required after the period of conversion if industry is to maintain a ratio of productivity that will insure prosperity. While we will not continue to produce at a wartime rate, neither should we permit ourselves to fall back to the prewar rate."

R&IE *the Switching Equipment SPECIALIST*



As you seek Quality and Service - remember that R&IE has been a specialist in the problems of Indoor and Outdoor Switching Equipment for over thirty years.

Shown here is a normal production line of Hi-Pressure, Self-Cleaning-Contact Switches, possibly on the way to some War Production center.

The flashover test, shown at the top, is one of the several methods used to check design and performance.

This same production may be serving you some day when peace-time reconstruction calls for a broader application of reliable switching equipment.

R&IE will continue to specialize in the making of this equipment long after the present War-time emergency.

The Load Tests made during development, during production, and after years of service, demonstrate that Hi-Pressure Contact Switches carry their rated load year in and year out under all service conditions

●

RAILWAY *and* INDUSTRIAL ENGINEERING COMPANY

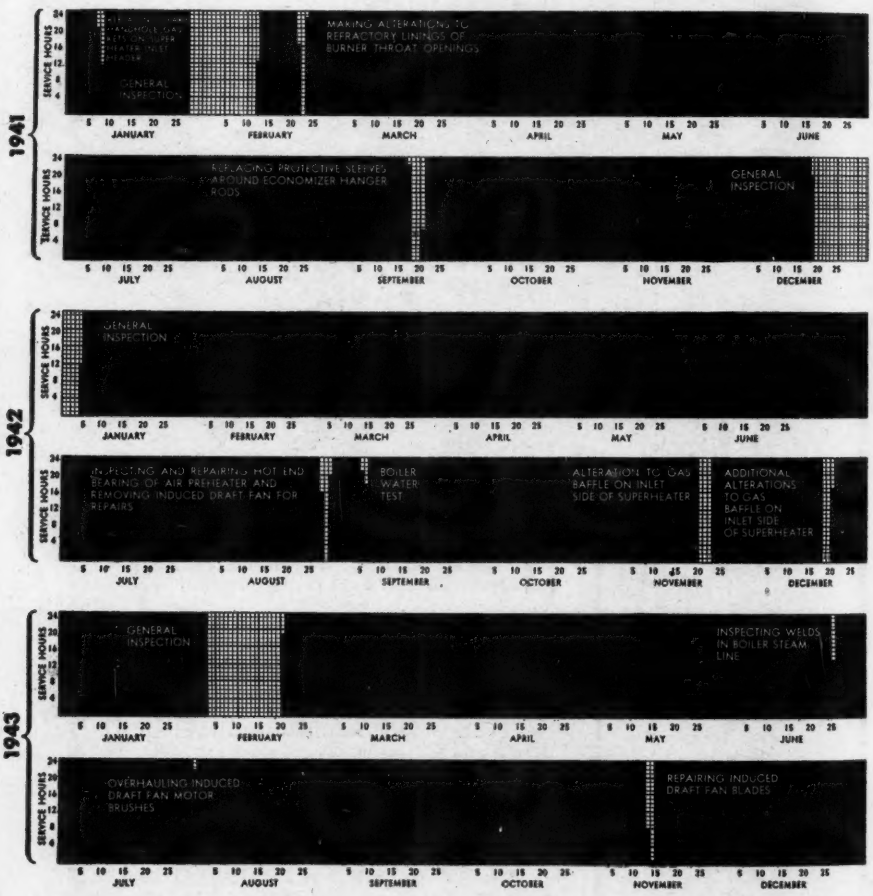
GREENSBURG, PA. . . . In Canada—Eastern Power Devices Ltd., Toronto

12½ BILLION LB OF STEAM

OPERATING RECORD of two C-E Units at Westport Station, Consolidated Gas Electric Light and Power Company of Baltimore.

CAPACITY (per unit)—285,000 lb per hr; **OPERATING PRESS.**—1325 psi; **TOTAL TEMP.**—915 F.

BOILER No. 1



COMBUSTION

C-E PRODUCTS INCLUDE ALL TYPES OF BOILERS, FURNACES, PULVERIZED FUEL SYSTEMS AND STOKERS; ALSO SUPERHEATERS, ECONOMIZERS AND AIR HEATERS

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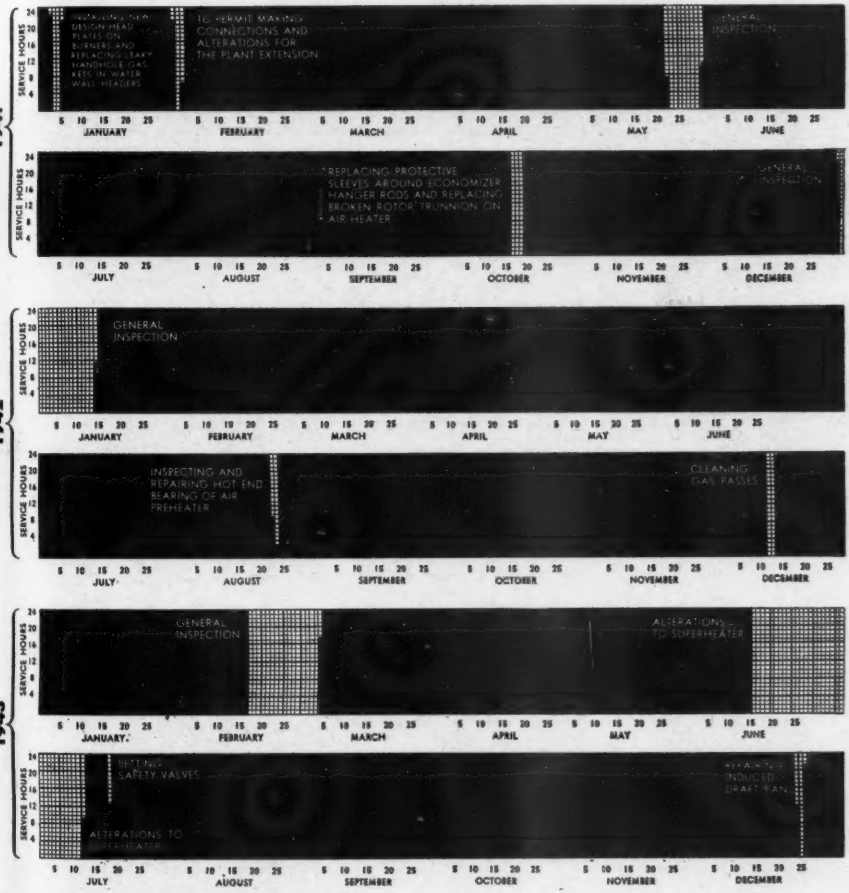
IN 3 YEARS OF WAR SERVICE

BOILER No. 2



COMBINED PERFORMANCE of both units—In service 92.5% of total hours in 3-year period. Averaged 91.2% of rated maximum continuous capacity for total hours in service over 3-year period. Availability, deducting time out for general plant inspection, 96.7%

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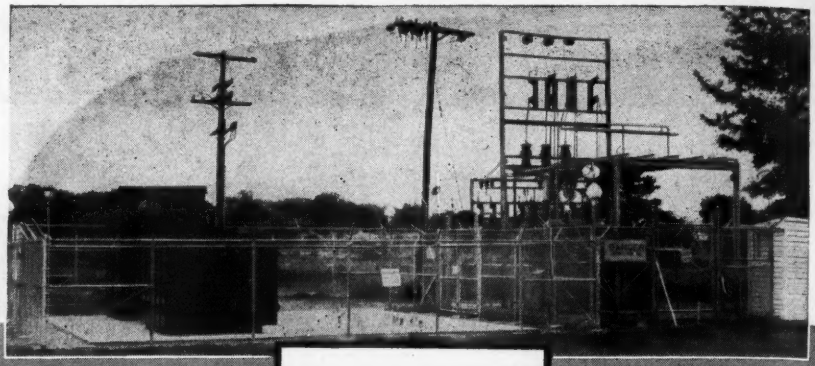

1000-KVA "PACKAGED" UNIT SUBSTATION	
Lowest bid	$18,610
Second bid	19,075
Third bid	19,315

Compare these actual installed costs on a public, sealed-bid project. Of eleven bids, these were the lowest for each type.

COMPARABLE "PIECEMEAL" SUBSTATION	
Lowest bid	$22,314
Second bid	24,000
Third bid	24,158

20% Savings VIA STANDARDIZATION

A $3704 saving in the first cost of this repetitively built unit substation is a matter of public record.

The purchase of repetitively built power apparatus also shortens your preliminary engineering time; installation is easier; maintenance is simplified. And every electric-service company shares in the benefits of *continuously improved* standard designs, made possible when the builder can concentrate on design fundamentals for an entire line.

Delivered as an integrated unit, these co-ordinated, factory-built substations also simplify your location problem, permitting a more flexible, well-balanced system with shorter secondary circuits. Should load centers change with the growth of the system, the substation can be easily moved. Again important savings are effected.

The increasing popularity of G-E unit substations is but one evidence of the cost-saving results of repetitive manufacture. It forecasts the great gains that hinge upon further standardization of heavy power apparatus. With your co-operation, General Electric plans to move ahead in this direction as fast as circumstances permit. *General Electric Company, Schenectady 5, N. Y.*

BUY WAR BONDS

GENERAL ELECTRIC

201-114E-176

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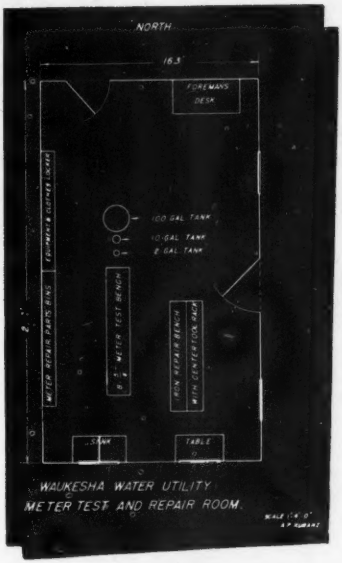
WELL LAID PLANS WILL BRING...

Increased Revenue

IN 1933 it was realized in Waukesha, Wisconsin, that with meters recording only 71.6% of the water pumped, a great deal of revenue was running to waste. Since that time, through research, experiment, planning and hard work, registration and revenues gradually increased until by 1941 yearly income was predictable to permit a reduction in water rates of 6.6%. And by the end of 1942 a registration of 92.78% was reached.



AN EFFICIENT METER SHOP
The meter shop is an important unit in any water department. When it is well arranged and well lighted, better work will be done.

102

Improved meter registration has been responsible for the greatest share of this increase. You, too, can increase your sales by improved meter testing and repairing. Make plans *NOW* so that as soon as the opportunity presents itself, you are ready to begin to reap benefits from better metering. Trident representatives have gained valuable knowledge and information from such men as Mr. A. P. Kuranz, Manager of the Waukesha Water Department, and will be glad to assist you.

NEPTUNE METER COMPANY • 50 West 50th Street • New York 20, N. Y.
Branch Offices in CHICAGO, SAN FRANCISCO, LOS ANGELES, PORTLAND, ORE., DENVER, DALLAS, KANSAS CITY, LOUISVILLE, ATLANTA, BOSTON.
Neptune Meters, Ltd., Long Branch, Ont., Canada

Blueprint NOW

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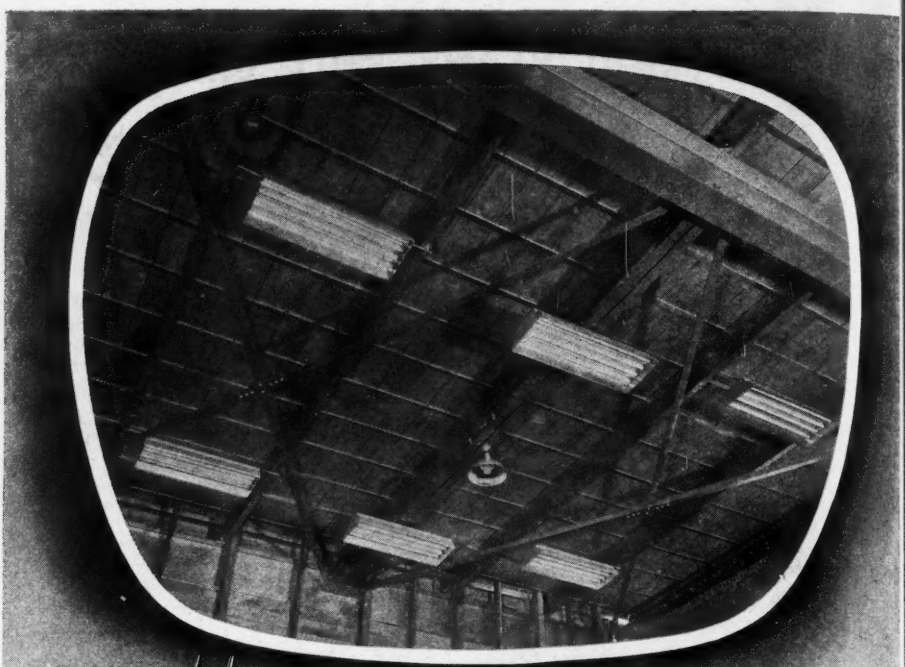
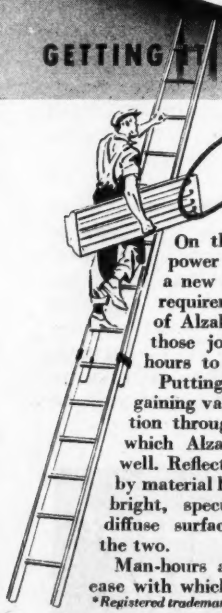


GETTING IT THERE IS EASIER WITH



Alzak Aluminum Reflectors

On the question of manpower, manpower to install the lighting fixtures in a new addition or to relocate them as requirements change—the lighter weight of Alzak Aluminum Reflectors makes those jobs easier. It saves on man-hours to do the job.

Putting light where you want it, gaining valuable man-hours on production through better lighting, is a job which Alzak Reflectors do especially well. Reflector shapes are not dictated by material limitations. You can obtain bright, specular finishes or matte, diffuse surfaces, or combinations of the two.

Man-hours are again saved by the ease with which Alzak Aluminum Reflectors can be cleaned. Dusting or washing with mild soap and water often suffices to keep them working at high efficiencies. Other methods may be needed under more severe conditions. But the glass-like hardness of the Alumilite finish (process patented) makes cleaning easy.

Aluminum is now available for other-than-war purposes. Since the production of Alzak Aluminum Reflectors requires no increased manpower, you can substitute Aluminum for the metal you have been using in reflectors. Our representatives will gladly help you determine the facts. Write ALUMINUM COMPANY OF AMERICA, 2134 Gulf Bldg., Pittsburgh 19, Pennsylvania.

*Registered trademark

ALCOA ALUMINUM

REG. U.S. PAT. OFF.

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Save to Win
with these four simple rules
of battery care:

1. Keep adding approved water at regular intervals. Most local water is safe. Ask us if yours is safe.
2. Keep the top of the battery and battery container clean and dry at all times. This will assure maximum protection of the inner parts.
3. Keep the battery fully charged—but avoid excessive over-charge. A storage battery will last longer when charged at its proper voltage.
4. Record water additions, voltage, and gravity readings. Don't trust your memory. Write down a complete record of your battery's life history. Compare readings.

If you wish more detailed information, or have a special battery maintenance problem, don't hesitate to write to Exide. We want you to get the long-life built into every Exide Battery. Ask for booklet Form 3225.

Exide
CHLORIDE
BATTERIES

. . . is a vital principle of utility operation!

Conservation of materials is no new story to the men who operate public utilities. With thrift and efficiency they have always planned for conservation.

They've squeezed the last ounce of use out of materials and equipment in their care . . . and today, that need is intensified.

One helpful principle to follow is that of "Buy to Last—Save to Win." Buy quality products and equipment, then care for it to avoid needless replacement. That conserves raw materials, labor, and space in factories. It frees these productive elements for essential war production.

THE ELECTRIC STORAGE BATTERY CO.
Philadelphia
Exide Batteries of Canada, Limited, Toronto

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Check these advantages of Kinnear Rolling Doors and you'll find that no other door offers so many outstanding features. Kinnear's sturdy, interlocking steel-slat construction is resistant to intrusion, fire, damage, wear, and weather. The Kinnear Rolling Door coils neatly overhead out of the way of damage, saving floor, wall and ceiling space —it opens straight up, over snow, ice, and stored materials—neat in appearance, it harmonizes with any architectural style. With Kinnear Rolling Doors and Motor Operation—a matchless combination—you simply press a button and the door rises smoothly and easily into a compact coil above the opening. Kinnear Motor Operation also means savings in time and labor, in heating and air-conditioning costs. If you're not already profiting from these advantages, write immediately for full details on Kinnear Rolling Doors and Motor Operation. The Kinnear Manufacturing Company, 2060-80 Fields Ave., Columbus 16, Ohio

SAVING WAYS IN DOORWAYS

KINNEAR ROLLING DOORS

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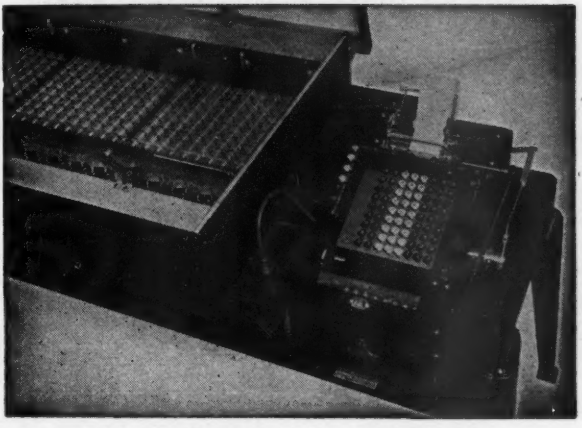
SAVE 50%
IN TIME AND MONEY WITH

THE ONE-STEP METHOD



OF BILL ANALYSIS

WHAT effect is the war production program having on your bill distribution? Analysis of customer usage data will provide the answer to this important question. In addition to a knowledge of the existing situation, certain trends may be disclosed, a knowledge of which may be of considerable importance to you under circumstances where the picture is rapidly changing.

The One Step Method of Bill Analysis is ideally suited to meet the needs of this problem. It does away with the necessity for temporarily acquiring, training and supervising a large clerical force. Our experienced staff plus our specially designed Bill Frequency Analyzer machines can turn out the job in a few days and at the cost of only a small fraction of a cent per item.

We will be glad to tell you more in detail about this accurate, rapid and economical method for obtaining a picture of your customer usage situation. Write for a copy of the booklet *"The One Step Method of Bill Analysis."*

Recording & Statistical Corporation

Utilities Division

102 Maiden Lane, New York, N. Y.

Boston Chicago Detroit Montreal Toronto

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Continuous Supplies . . .

CALL FOR MOUNTING DOLLARS

Official U. S. Coast Guard photo

Official U. S. Marine Corps photo

. . . . STEP UP YOUR PAY ROLL PLAN

War is a continuous job.

Ever-widening, ever-advancing fighting fronts call for a never-ending flow of manpower and matériel—financed by a *continuous flow of money.*

Your responsibility as top management increases with the mounting tide of battle. So keep this one salient fact before you at all times: *The backbone of our vital war financing operation is your Pay Roll Savings Plan.*

Your job is to keep it constantly revitalized. See to it that not a single new or old employee is left unchecked. See to it that your Team Captains solicit everyone for regular week-in and week-out subscriptions. And raise all percentage figures wherever possible.

Remember, this marginal group represents a potential sales increase of 25% to 30% on all Pay Roll Plans.

Constant vigilance, in a quiet way, is necessary to keep your Pay Roll Savings at an all-time high. Don't ease up—until the war is won!

Back the Attack!

SELL MORE THAN BEFORE!

The Treasury Department acknowledges with appreciation the publication of this message by

PUBLIC UTILITIES FORTNIGHTLY

This is an official U. S. Treasury advertisement—prepared under the auspices of Treasury Department and War Advertising Council.

WELCOME BACK

Empire STREEEMLINE BRONZE CASE METERS

Amendment to W. P. B. Order L-154 Permits Resuming Manufacture of these Superior Bronze Case Meters.

YES, Empire Streeemline Meters are again in production—welcome news to the many water meter buyers who preferred to defer purchases until bronze cases could be made available. And, these—the most modern of today's meters—embody even more refinements than their pre-war predecessors. For we have learned, as we have worked for Victory, new ways to make better meters.

Empire Streeemline Meters are of the oscillating piston type—a design principle that over a 60 year span has earned an enviable reputation among water works' men for extreme accuracy, long life, and low cost of maintenance. In the Streeemline, scientifically proportioned measuring chambers extract the ultimate in precision from perfectly balanced pistons. Smooth interior flow contours and measuring chambers with dual inlet and outlet ports keep pressure absorption at the absolute minimum. Balance and careful fitting reduce friction and wear, assuring retention of the high initial accuracy, over a long period of time.

Now A Complete Domestic Line

Our engineers have expanded the EMPIRE Streeemline design, during the war interlude, to provide complete coverage of all domestic requirements. We are now in production on all sizes from ⅝ inch through 1 inch and can make prompt deliveries on orders received. Revised literature on the complete line of EMPIRE Streeemline Meters is now available and will be sent upon request.

PITTSBURGH EQUITABLE METER CO.

Atlanta Brooklyn Chicago New York — **MERCO NORDSTROM VALVE CO.** Main Offices, PITTSBURGH, PA — Columbia Pittsburgh Houston San Francisco Kansas City Seattle Boston Buffalo Los Angeles Tulsa

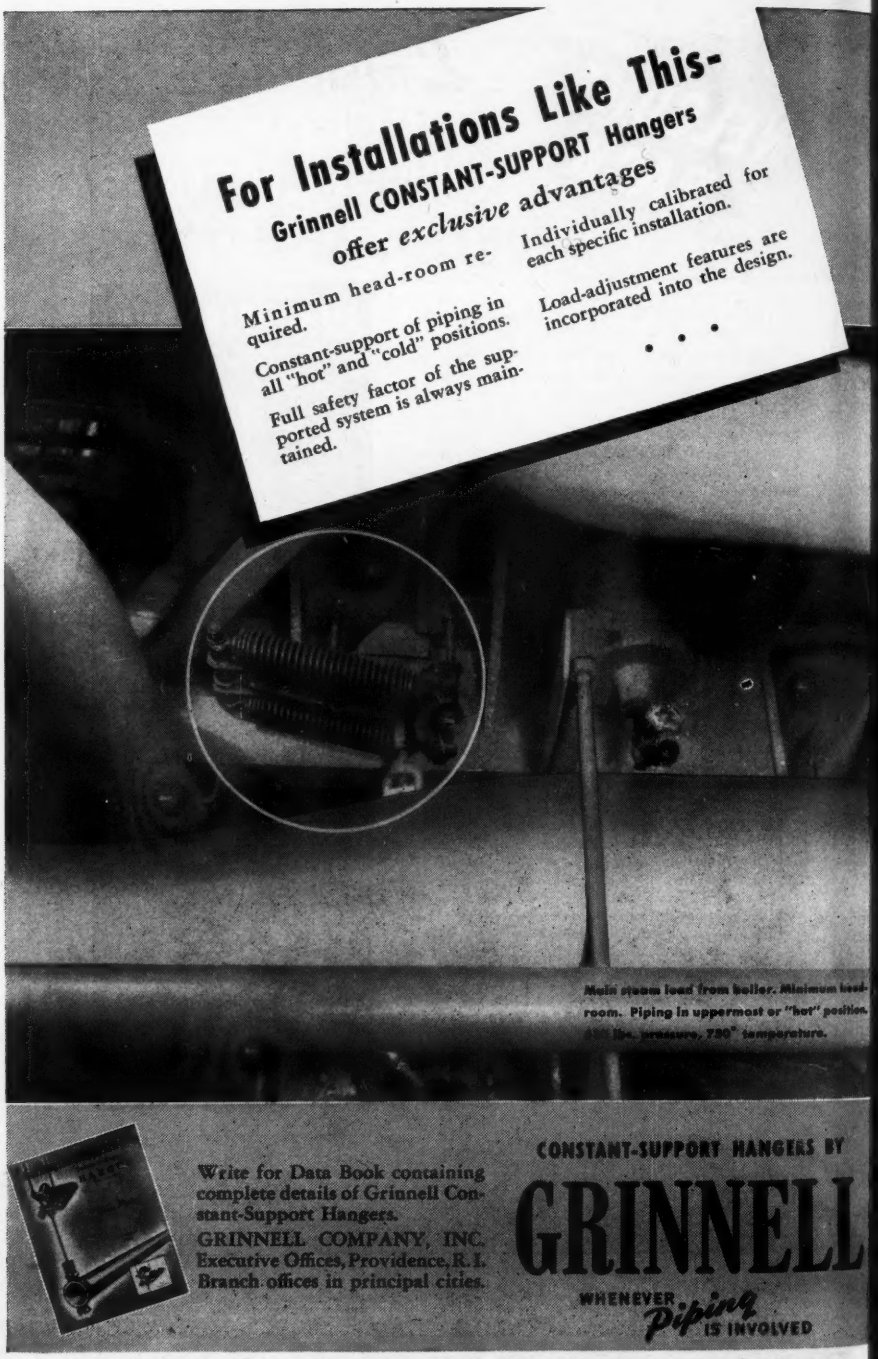
National Meter Division, Brooklyn, N. Y.

AVAILABLE *NOW!*

IN SIZES ⅝ INCH THRU 1 INCH

PITTSBURGH NATIONAL

Water Meters



Write for Data Book containing complete details of Grinnell Constant-Support Hangers.
GRINNELL COMPANY, INC.
Executive Offices, Providence, R. I.
Branch offices in principal cities.

CONSTANT-SUPPORT HANGERS BY
GRINNELL
WHENEVER *Piping* IS INVOLVED

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● ● ● following these suggestions. They will assure your cashing-in, regularly, on your "CLEVELANDS" built-in ruggedness and productive performance.

● Lubricate thoroughly and regularly. When lubricating, make certain that all fittings are open and all bearings taking grease. Be sure to replace any broken or damaged fittings. ● When making spot lubrication, check machine for loose or broken bolts, broken strands in cables, worn or broken links in chain and worn brake and clutch facings, and replace at once all damaged parts. ● Check Crank Case Oil level. Fill to full mark. ● Check coolant in radiator. If contaminated, it should be changed. ● Check carefully all bucket rooters for sharpness. Renew when dull. This is exceedingly important and will pay dividends. ● Keep Conveyor belt tension as low as possible without allowing belt to slip. ● Check fan belt for tension . . . water pump and radiator for leaks. ● Examine all wiring. See that connections are tight, wires clean and not damaged. ● Operate digger with Boom Level when desired depth is reached. Never "crowd" machine ahead so that it "labors."

THE CLEVELAND TRENCHER COMPANY
20100 ST. CLAIR AVE. "Pioneer of the Small Trencher" CLEVELAND 17, OHIO
"CLEVELANDS" Save More . . . Because they Do More

Throughout the country our trained men are ready to help you meet today's unprecedented demand for power. In the erection or maintenance of transmission lines . . . regardless of distance or terrain . . . Hoosier experience and special equipment guarantees efficient and economical service.

HOOSIER ENGINEERING CO.

COLUMBUS, OHIO

NEW YORK - CHICAGO

ERECTION and MAINTENANCE OF TRANSMISSION LINES

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THE FOUR FREEDOMS

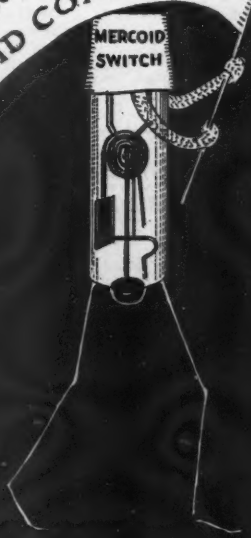
1
FREEDOM
FROM
DUST
AND
DIRT

2
FREEDOM
FROM
CORROSION

3
FREEDOM
FROM
OPEN
ARCING

4
FREEDOM
FROM
BURNT OUT
CONTACTS

A PROCLAMATION BY EVERY MERCOID MERCURY SWITCH IN ALL TYPES OF MERCOID CONTROLS

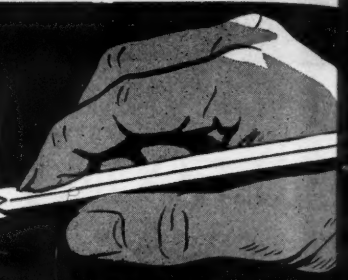


MERCOID AUTOMATIC CONTROLS
FOR OIL BURNERS, STOKERS, GAS BURNERS, REFRIGERATION, AIR CONDITIONING AND VARIOUS INDUSTRIAL APPLICATIONS

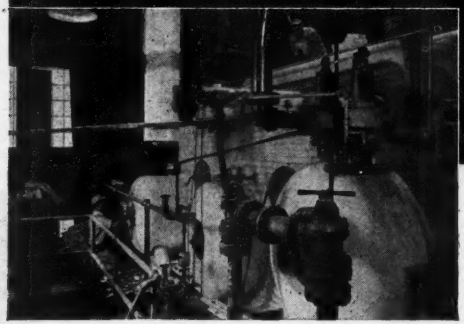
MADE BY THE MERCOID CORPORATION, 4221 BELMONT AVENUE, CHICAGO 41, ILL.

STEAM PIPE INSULATION

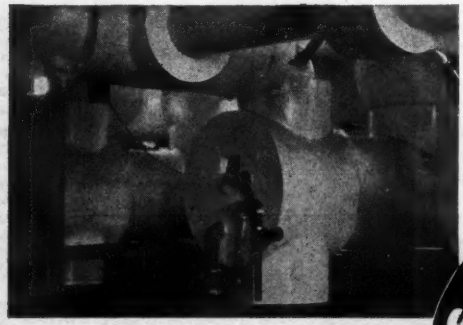
J-M 85% Magnesia



The Most Widely Used Specification in Power Plant Insulation for More Than 50 Years



FOR PIPE COVERING . . . J-M 85% Magnesia Pipe Insulation is furnished in 3 ft. sections or segments in the following thicknesses: Standard, 1½", 2", 2½", Double Standard and 3" (Double Layer). Often used as a second layer, outside of J-M Superex, where pipe temperatures are above 600° F.



IN BLOCK FORM . . . J-M 85% Magnesia Blocks are furnished 3"x18", 6"x36", 12"x36", in thicknesses of 1" to 4". Weight, about 1.4 lb. per sq. ft., per 1" thick.

. . . and for good reasons

At service temperatures up to 600° F., no insulation delivers more thoroughly satisfactory performance than J-M 85% Magnesia. That's a fact that's been proved time and again in power plants of every type. Light in weight, readily cut and fitted, J-M 85% Magnesia is easy to install. On the job, it provides ample mechanical strength, long life and high insulating efficiency. Engineers agree that, wherever used, J-M 85% Magnesia assures permanently economical service.

Consult your nearest J-M District Office about your magnesia requirements, or write Johns-Manville, 22 East 40th Street, New York 16, N. Y.

JOHNS-MANVILLE
INDUSTRIAL INSULATIONS
For every temperature . . . for every service condition

JM

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ARMORED CABLE · RUBBER POWER CABLES · VARNISHED CAMBRIC CABLES

CRESCENT

ability to manufacture

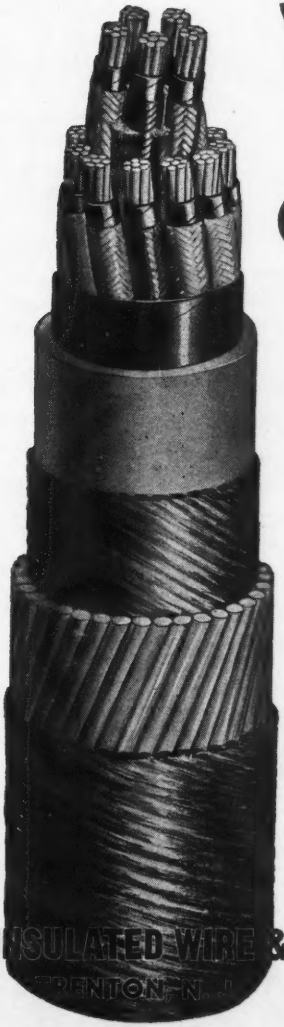
WIRE

and

CABLE

is the result of

Over 50 Years Experience



NEMA

CRESCENT INSULATED WIRE & CABLE CO.

TRENTON, N. J.

PERMACORD LEAD ENCASED AND PARKWAY CABLES · SYNTHOL WIRES · SHIPBOARD CABLES

BUILDING WIRE · IMPERIAL NEOPRENE JACKETED PORTABLE CABLES

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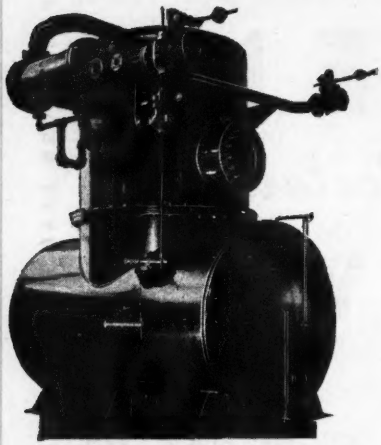
Deaerating heaters



tailored to fit

Typical medium-size vertical deaerating heater mounted on a horizontal storage tank. Vent condenser on side to save headroom.

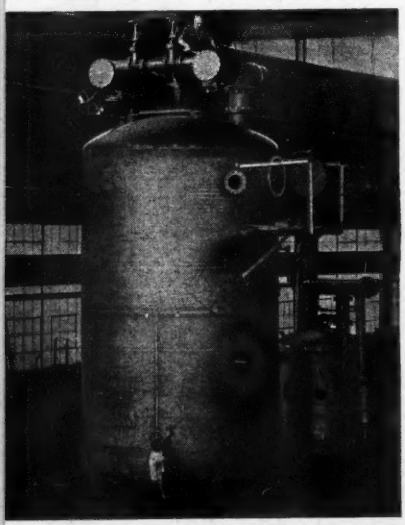
Deaerating feedwater heaters must be fitted to many factors other than required capacity and operating conditions. The desired amount of storage may mean a large single-shell unit, or a heater with a separate storage tank. Space limitations and available access to buildings must be considered. Railroad clearances limit the size and shape of large units. And with each variation in shape, the critical design areas, volumes, tray and water distribution, piping arrangements, and controls must be proportioned for dependable operation and maximum feedwater heating and deaerating performance.

How Elliott engineers fit Elliott deaerating heaters to their jobs is shown in the photos on this page. If you have a heater problem, particularly one that looks tough, talk it over with these Elliott specialists.

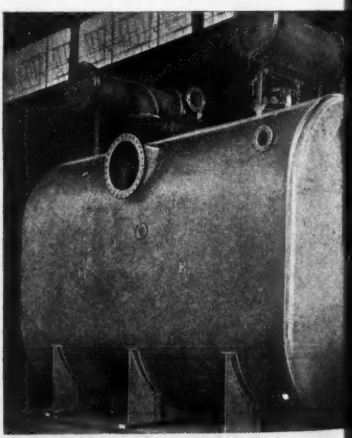
ELLIOTT COMPANY

Deaerator & Heater Division, **JEANNETTE, PA.**

DISTRICT OFFICES IN PRINCIPAL CITIES



Two vertical deaerating heaters. Large unit has twice the capacity of the smaller, and eight times the storage capacity. It is up to railroad car limitations—12 ft. by 27 ft. high.



This 1,500,000-lb.-per-hr. deaerating heater was shaped to fit into limited width in a big utility station.

N-977

ELLIOTT Company

STEAM TURBINES • GENERATORS • HOT
CONDENSERS • FEEDWATER HEATERS
DEAERATORS • STEAM JET EJECT
CENTRIFUGAL BLOWERS • TURBOCHAR
FOR DIESEL ENGINES • TUBE CLEAN
STRAINERS • DESUPERHEATERS • FILT

Utilities Almanack

Due to wartime travel restriction, conventions listed are subject to cancellation.

August

31	Th	¶ *Illuminating Engineering Society will convene, Chicago, Ill., Sept. 14–16, 1944.*

September

1	F	¶ *Indiana Electric Association will hold fall meeting, French Lick, Ind., Sept. 20–22, 1944.*
2	Sa	¶ *American Standards Association will hold convention, New York, N. Y., Sept. 21, 1944.*
3	S	¶ *Maryland Utilities Association will hold meeting, Baltimore, Md., Sept. 22, 1944.*
4	M	¶ *American Public Works Congress will hold meeting, St. Paul, Minn., Sept. 24–27, 1944.*
5	Tu	¶ *Municipal Electric Utilities Association of New York State will hold session, Lake Placid, N. Y., Sept. 26–28, 1944.*
6	W	¶ *National Safety Congress of National Safety Council will convene, Chicago, Ill., Oct. 3–5, 1944.*
7	Th	¶ *Edison Electric Institute, Electrical Equipment Committee, convenes, Pittsburgh, Pa., Oct. 5, 6, 1944.*
8	F	¶ *United States Independent Telephone Association will hold convention, Chicago, Ill., Oct. 10–12, 1944.*
9	Sa	¶ *South Dakota Telephone Association will hold meeting, Mitchell, S. D., Oct. 19, 1944.*
10	S	¶ *Association of Electronic Parts and Equipment Manufacturers will hold conference, Chicago, Ill., Oct. 19–21, 1944.*
11	M	¶ *International Association of Electrical Inspectors, Western Section, opens meeting, Indianapolis, Ind., 1944.*
12	Tu	¶ *Edison Electric Institute, Accident Prevention Committee, starts session, New York, N. Y., 1944.*
13	W	¶ *Pacific Coast Gas Association opens meeting, Los Angeles, Cal., 1944.*

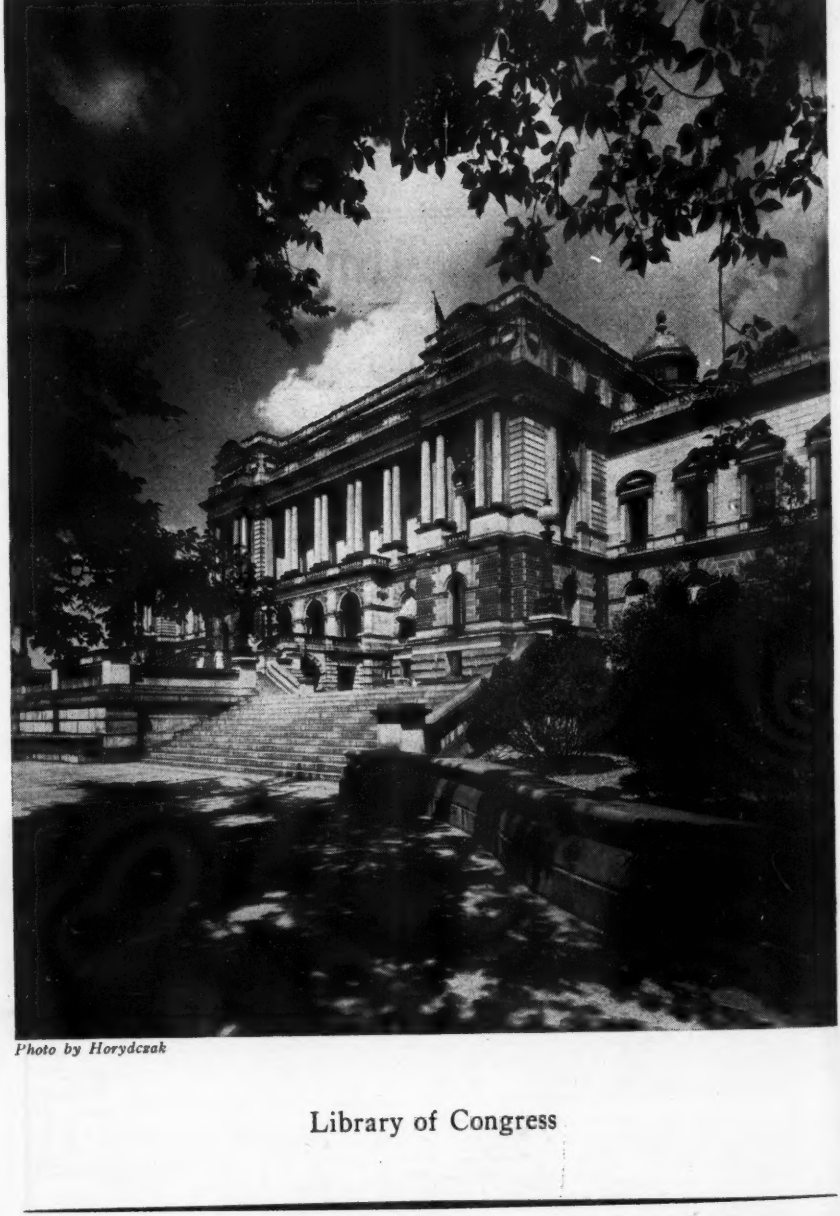


Photo by Horydczak

Library of Congress

Public Utilities
FORTNIGHTLY

VOL. XXXIV; NO. 5 AUGUST 31, 1944

Passing Taxes on to the Utility Consumer

The contention that war taxes paid by utility companies should not be charged to operating expenses has given rise to a series of regulatory problems which may remain with us after the war. This author examines the respective equities of the utility ratepayer, security holder, Federal government, and taxpayers generally in the determination of the question "Who should shoulder the burden of utility taxation?"

BY A. C. WEBBER

FORMER CHAIRMAN, MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES

THE recent agitation to have utility taxes, particularly Federal excess profits taxes, diverted in the form of rate reductions has raised a serious regulatory question. It is a question which is likely to remain unsettled long after the war and (we hope) its skyscraping corporate taxes have become a matter of history. The focal point of this discussion—namely, the decision of the Michigan Supreme Court in the Detroit Edison Case, (Detroit *v.* Public Service Commission [1944] 54 PUR(NS) 65, 14 NW (2d) 784)—together with its repercussions in Washington, Detroit, and throughout a number of state capitals and state regulatory commission offices, has been so completely reported and analyzed in this magazine[1] as not

[1] For the most comprehensive reportorial article on this subject, see "Federal Taxes or Rate Reductions?" by Ernest R. Abrams, August 17, 1944. Mr. Abrams' discussion combined the essence of a series of news reports

to warrant extended recital now.

Briefly stated, the court, in a 4-to-3 decision, held erroneous the action of the Michigan Public Service Commission that the commission was without power to exclude any part of the Federal excess profits tax computed at the rate of 90 per cent upon some $8,000,000 surplus of the company, in the determination of the just and reasonable rate to the consumers of the city of Detroit. The majority opinion excludes the excess profits tax from the category of normal taxes, "as an abnormal and avoidable tax."

Suffice it to say that the city of Detroit is making a double-barreled attempt, either by way of rate reduction or by way of a prior franchise tax levied by the city, to siphon off the funds which the Detroit Edison Company and other utilities would have to pay the Federal government in the form of excess profits taxes.

THE Michigan Supreme Court seemingly upheld the city to the extent of ruling that excess profits taxes are not proper charges to utility operating expenses, although it is debatable whether this decision postulates a *pro tanto* rate reduction. I am informed that regulatory authorities elsewhere are now engaged in exploring similar proposals, not only with respect to their local utility liability for excess profits taxes, but for other so-called war taxes. The Secretary of the Treasury has indicated, I am also told, that the Federal government will remain neutral; and that just about brings us up to date on developments[2].

BUT the fundamental question whether or not there is any equitable obligation on the part of utility regulators to pass taxes on to utility consumers in the form of charges to operations is hardly receiving the serious attention it deserves. This, despite the somewhat voluminous discussion that has been going on ever since the ingenious corporation counsel of the city of Detroit tipped his hand as to the city's intentions with respect to Detroit Edison's Federal tax liability.

The established practice of including income taxes together with property taxes in operating expenses is not recent in utility regulation. The practice received the approval of so pronounced a liberal as the late Justice Brandeis, in the Galveston Electric Company Case, decided in 1922, 258 US 388, PUR 1922D, 159, and cited in the Detroit Case. Although Federal income taxes then were much less than now, the principle cannot vary with that change. Justice Brandeis said:

"There is no difference in this respect between state and Federal taxes, or between income taxes and others."

EXCESS profits taxes, then unknown, clearly come within the category of income taxes. It was the treatment of taxes by the public utilities commission of the District of Columbia as deductible operating expenses that brought on a rather cryptic remark by Justice Douglas in the dissenting opinion in

on this general subject for the past few months which appeared in PUBLIC UTILITIES FORTNIGHTLY, *Telephony, Electrical World, The Wall Street Journal,* and other trade and business publications.

[2] EDITORS' NOTE. — Since this article was written, the Michigan commission has ordered Detroit Edison to cut rates $10,450,000. See "Pages with the Editors," this issue; also page 320.

the Vinson Case,[8] decided March 27, 1944, and undoubtedly known to the Michigan Supreme Court, as the Detroit Case was not decided until the following May. The Washington commission allowed the deduction as operating expense of excess profits taxes and income taxes up to and including 31 per cent, where in former years it was 16 per cent.

There is no other place to put such taxes but operating expense. It is to be remembered that the stockholder also pays income taxes on the dividend received because that deduction does not relate to operating expense of the utility. A betterment assessment, to which a utility may be subjected over other interests, depends for its validity upon the assumption that a special benefit is received, so that it may be justly and legally added to capitalization as an increase in property value (Union St. Railway *v.* Mayor of New Bedford, 253 Mass 304). No such condition is assumed to exist here. Income taxes, we will all agree, do not generally improve property values! By this standard, franchise taxes, or taxes upon the privilege of doing business, become an operating deductible tax, although measured by the value of the aggregate shares of the company. That method does not make it a tax on capital, but only upon the right to do business.

IN fixing prices of commodities in general in the open market, the amount of the investment in the producing or distributing agency is rarely a matter of public concern. It is the fair and reasonable price of the commodity itself, as we have come to know it, what is really in a way "historical cost," and not always the net earnings finally accruing to the dealer. When the price is reduced by power of government control, as it now is, it is to a point regarded by those directing such policy fair and reasonable for the article standing by itself, and under the prevailing circumstances what it is fairly worth. The average dealer in commodities is not limited to a 6 or 8 per cent upon his invested capital, or any fixed rate of return, as in utilities. No one apparently cares what the profit of the particular producer or retailer

[8] Vinson *v.* Washington Gas Light Co. 321 US 489, 52 PUR(NS) 257. The Douglas dissent (Black and Murphy concurring) stated in part: "It has been accepted practice to deduct income taxes as well as other items from operating expenses in determining rates for public utilities. . . . But this is war, not business-as-usual. When income taxes are passed on to consumers, the inflationary effect is obvious. And it is self-evident that the ability to pass present wartime income taxes on to others is a remarkable privilege indeed."

¶ "THE *average dealer in commodities is not limited to a 6 or 8 per cent upon his invested capital, or any fixed rate of return, as in utilities. No one apparently cares what the profit of the particular producer or retailer is, so long as the price of his commodity is kept down to what is fair and reasonable. According to the public idea of value, if that standard is complied with, let him make what he can, as a just reward for his enterprise, industry, and business acumen.*"

is, so long as the price of his commodity is kept down to what is fair and reasonable. According to the public idea of value, if that standard is complied with, let him make what he can, as a just reward for his enterprise, industry, and business acumen. We take care of the overflow by income tax plus excess profits and other forms of taxes. Ultimately, inheritance and succession taxes complete the circle.

But in utilities, assuming the ordinary case, where providently built and operated under competent management, it has been regarded as only fair and equitable, constitutionally and otherwise, that the owner should be content with no more than a just and reasonable compensation for the money invested by him in the public service. Fair price of the commodity is measured by that yardstick. Excessive and exorbitant profits are forbidden regardless of the value of the commodity furnished to the consuming public. A 6 per cent dividend return seems to be that most favored by commissions—sometimes less.

WHEN [illegible] from everyday experience, we are informed that the average charge for the customary 60-watt electric light for an evening is but one cent, or perhaps a little more, it is very difficult to argue values accompanied by terms such as exorbitant and oppressive. It is certainly difficult to weigh this service value of most of the conveniences furnished by modern electricity such as air conditioning, refrigeration, house heating, domestic conveniences of many kinds, except in terms of what we would be glad to pay, if we had to go without them. The answer to those whose capital makes all these things possible can only be the assurance that, under normal conditions, they will receive a reasonable and fairly stable compensation.

Passing on burdens can only be considered from what the investor receives, not what others receive in other noncomparable fields. He should receive reasonable compensation under all rules of common decency, aside from constitutional obligations owed to him, because the corporation and its assets are still held in trust for the public. The company cannot be sold to others as other business can be. It is usually provided in utility charters and general laws that consent of the state is absolutely necessary before either embarking on utility enterprise or abandoning it. The rigidity of service standards, obligation to serve in given areas, penalties for discrimination, the strict regulation of financing, and close regulatory control of rates, are all too familiar burdens of the utility (as compared with the nonutility) business to require more than bare mention in these pages.

This peculiar utility status, with its accompanying burdens, was clearly recognized by Congress in its wartime price-control legislation. The U. S. Supreme Court, in the recent cases of Davies Warehouse Co. *v.* Bowles [4] and the Vinson Case already referred to, noted as a declaration by Congress that utility rates, subject to state regulation, did not need further control.

To give public utility exemption its fullest effect possible, the Supreme Court even went beyond the traditional classes in construing the term "public utility" and included warehouses.

[4] (1944) 321 US 144, 52 PUR(NS) 65.

Gas and Electric Service

". . . gas and electricity are commodities that do not lend themselves to storage and accumulation against future demands, and possibly higher prices, as some commodities do. Overhead charges must go on unremittingly when the customer lets up altogether with his use, or whether he uses his service as much as he should. Small-use customers must be carried at a loss, because public welfare is benefited in the long run. In other lines these customers are generally obliged to pay for what they buy."

THE courts, with the exception of the Michigan Supreme Court in the Detroit Edison Case, have traditionally kept hands off matters of legislative policy as no part of the judicial function. So also administrative boards are not to exercise legislative powers where not expressly delegated to them. Congress has not indicated that taxes should be dealt with other than as expenses. It is reasonable to suppose that when Congress decided to exempt rate matters, the practice of state utility commissions as to inclusion of taxes in operating expenses was to remain as it was in the past. To argue that it is passed on, would appear to be a judicial invasion of legislative policy.

Few, if any, of the proponents of increased taxes on public utilities, take the time to realize that by nature of equipment and organization, public utilities, such as gas and electricity, are irrevocably tied down to serving the particular market in which they are situated. They cannot use ordinary means of transportation for the distribution of their product, but only the specialized means (pipes, wires, etc.) that form an inseparably and integral part of their plant and fixed capital. Stated concisely, a public service corporation performs many essential social needs that the public itself might have performed, but is generally handicapped from performing for lack of capital. In short, private capital has been invited to perform a public duty. For this reason, private capital so invested receives certain protections and is subject to regulation at all times.

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gether with his use, or whether he uses his service as much as he should. Small-use customers must be carried at a loss, because public welfare is benefited in the long run. In other lines these customers are generally obliged to pay for what they buy. Ordinary business does not worry about a customer service cost and, during these times at least, does not have to worry about customers at all.

UTILITY industries require an initial expenditure of capital at their origin, large in proportion to their annual working expenses and income. It may take years of deficit before the utility reaches financial success. But past deficits are not allowed to be capitalized or otherwise become the basis of present or future rates. (This, despite the recent implication by the Supreme Court in Federal Power Commission *v.* Hope Nat. Gas Co. (1944) 320 US 591, 51 PUR(NS) 193, that the converse of this proposition may not be equally treated; *i. e.*, that past surplus earnings or customer contributions to capital *may* be the basis of present or future rate reductions.) Computed upon a per customer basis of capital investment, I have found, from experience as a commissioner, that capital investment in electric plants, for instance, may run as much as $200 to as high as $400 for each customer served.

To be economical in operation calls for the highest standards of efficiency and upkeep to meet the growing demands for adequate service, and keeping abreast of the progressive advancements of science. This means constant demand for investment capital. Accordingly, a substantial part of revenue income may be taken up for interest charges which must be kept down to the lowest point. Cash must be frequently borrowed to be paid out in advance of receiving payments from customers, and this is substantially so in extension of plant and development generally.

We are constantly reminded by court decision, when a public service company is sued in personal injury cases, that such agencies are held to the very highest degree of care, in the interest of public safety. They deal with forces highly destructive to community life and property. If they fail in the slightest degree in this duty, they pay heavily in damages, and management may subject itself to criminal penalty.

Utility management has not forgotten, from the experience immediately following World War I, that a sudden increase in utility business is not necessarily healthy from the standpoint of public utility investment, because of the temporary nature of such business. The experience of the telephone companies, called upon suddenly to enlarge plant and equipment to accommodate the great demand for new telephones, followed by the precipitate dropping of many of these newly acquired customers, leaving the industry with the increased plant burden from which many companies suffered financially for a long time, is still an unpleasant memory. The Bell telephone system reports that it was obliged to expend in the neighborhood of $1,000,000,000 during 1941, 1942, and 1943 in new construction, or to be exact $919,000,000. Careful attention was given to this expansion by limiting new lines and services by rationing.

Other public services, required to increase production plant under similar conditions, have been very careful in unnecessary plant extensions.

EXTRAORDINARY or emergency taxes occasioned by the necessities of the present war must be levied with regard to the immediate needs of the country peril, and naturally absolute justice is impossible, because of the speed required and the complexity of the task. War is national defense, self-preservation. We are taught to think in terms of obligation, duty, and sacrifice, rather than of individual right.

It always has been the dream of the economist to work out a tax schedule by which each individual contributed in proportion to his ability, that the burden would be most easily borne, and individual sacrifice would be reduced to its lowest point. It is this thought that should be in mind in shifting any specific tax from one class to another. But in this distribution of obligation, it is unwise to do unnecessary and avoidable harm. If a certain kind of property falls under a particular heavy tax exaction, it is but natural that men will avoid the acquisition of that kind of property; and the tax will have a repressive effect and thus defeat its own purpose of raising revenue.

Small investors of utility securities must run well into the millions. Somewhere I have read that one-fourth of the national wealth is represented in the utilities, if we include the railroads and facilities for public transportation. We must not overlook our mutual savings banks, upon whom utility companies largely depend for loans. *Savings banks hold the deposits of fifteen and a half millions of depositors; and their money which amounts almost to twelve billions of dollars.*

The widely diversified stock ownership of our large utilities supports the above premise of vast public financial risk. We find a million stockholders in three companies alone, granting some duplication of ownership.[5]

Thus it appears that public utility shareholders are not only becoming an increasing class, but, as a class, more dependent economically on return from their investment. Investors in the large income brackets are more likely, in these times, to concentrate upon municipal or other government tax-exempts, or keep their funds uninvested. Senior securities of utilities with low rate of return are in greater favor with them than common stock, although it is not unusual to find indi-

[5] American Telephone and Telegraph (1943 report) had 651,711 stockholders of record, averaging 29 shares each, including 60,000 employees. Pennsylvania Railroad reports 211,216, averaging 62 shares, and Consolidated Edison of New York 141,521. All these show steadily widening distribution of shares.

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viduals with large holdings of junior securities of utility companies.

AN extension of the small stock-holding groups is of decided public benefit. It can be the modern substitute, when diversification becomes extensive enough, for municipal ownership, which has made little progress recently, because of financial limitations upon municipalities, especially larger municipalities. A wider distribution of all enterprises among the small investors may be the answer to politico-social aspirations, in the nature of democracy in industry—a true democracy of thrift, under the watchful eye of our Securities and Exchange Commission and state "Blue Sky" commissions.

Training and education and wholesome interest in public affairs may be said to accompany ownership of even a few shares of any industrial stock. The remarkable statistical information required to be furnished of company's doings awakens the desire to understand not only company policy but also the nation's policies. This is a form of propaganda, subject to government scrutiny, that is likely to produce habits of reason and logic, and a more thorough grasp of fundamentals that are basic to good citizenship.

Moreover, the psychologic value of the regular dividend check, fairly and honestly earned, regularly received, cannot be overestimated. It is an insurance against loose thinking, a protection to many against the clamor of the demagogue who cares little, if anything, about other people's money, or the destruction of our time-tested system of encouragement to private enterprise and initiative.

So much for democracy in our industrial holdings. How does this bear on tax policy? The average utility stock investor in deciding whether to allow his savings to remain in such investment or to increase the amount, in view of the rising costs of government, receives quite a start when he learns of the effect of the taxation burden from his corporation's annual statement.[6]

Public utilities contribute a large share of local real estate taxes where plant and equipment are situated. When we find tax rates in many cities and towns of Massachusetts running over $40 a thousand and as high as $50, we can imagine what the tax rate would be if the utility property did not take up a substantial part of the load which otherwise would fall altogether upon the tax-burdened home owner. This dependence of local authorities upon the tax contribution of their local utilities is very marked indeed, and may be said to be a deterrent to municipal ownership. The result of utility contribution to local taxes is to distribute a part of the real estate tax burden in the monthly bill to the utility customer, where it is hardly noticed, among a great many that do not pay any share of such local taxation except through such means.

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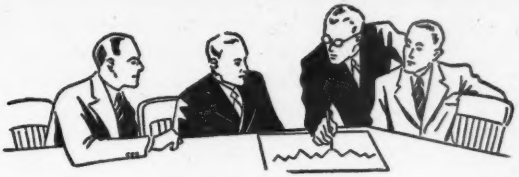
[6] Thus, for a single but fairly typical example, Consolidated Edison Company of New York for the year 1943 reports that taxes directly charged and paid by the company were equivalent to 23.97 cents on each dollar of revenue, or $5.74 a share on the common stock, or $16.52 per meter served, leaving the small margin of $1.60 per share paid for dividends on outstanding common stock. Common stock dividends only received 6.6 cents of the revenue dollar. A small part of the $5.74 burden of taxation would easily destroy the $1.60 to shareholders or, perchance, force the company into unwise financial manipulation to pay dividends, for which the company and the public might ultimately suffer later.



Extraordinary or Emergency Taxes

"EXTRAORDINARY or emergency taxes occasioned by the necessities of the present war must be levied with regard to the immediate needs of the country peril, and naturally absolute justice is impossible, because of the speed required and the complexity of the task. War is national defense, self-preservation. We are taught to think in terms of obligation, duty, and sacrifice, rather than of individual right."

While the difference in his rate is slight to the consumer, such amount, if charged against earnings, may mean the difference between a fair dividend rate to the stockholder and an unattractive or investment-repelling return. It is common knowledge that the great middle class of our country, including those who have retired from active life, and dependents, relying upon a fixed income from what was regarded as conservative investment and not speculation, are crushed between the high costs of wartime living on the one hand and income taxes on the other. Savings banks have been obliged to cut their dividends one-half and even more. To further deplete the income of this segment of society is to cause suffering among an honest and industrious class, whose only sin in life appears to be that they made every endeavor to provide their own "social security"—to put aside a portion of their earnings, denying themselves and families small luxuries in bygone years.

WE have seen in the foregoing argument that, as between the utility ratepayer and the utility investor, there are reasons why the corporate taxes of a utility should be borne by the ratepayer as an operating expense, at least to the extent of allowing over-all fair rate of return to go to the investor. It would seem that this condition is necessary not only to assure a utility of an adequate supply of capital, but also to insure protection from abuse and dangers of inflation. Such a safeguard lies in the fact that the utility investor is, himself, subject to heavy income taxes, both state as well as Federal, which are the common lot of all Americans today.

It is not certain, on the contrary, that systematic utility rate reductions to absorb tax liability would not produce an inflationary result. This, despite protests of OPA counsel in the Detroit Edison Case to the effect that utility rate reductions are counter-inflationary. A utility rate reduction in-

evitably has an alternative effect: (1) Either it leaves more money in the hands of the consumers paying for the same amount of service, or (2) it encourages the consumer to use more service for the same amount of money. Neither of these results may be especially desirable right now.

To the question why the consumer should not have this monetary benefit, rather than the investor, the answer, as far as Federal excess profits taxes are concerned, is that neither would benefit—but rather the Federal government through actual tax collections. To the question whether the Federal government and other tax authorities could not tax the extra money in the hands of the utility consumer, as well as in the hands of the utility corporation, through individual income taxes, the answer is clear: The tax against the utility corporation is a *net* collection by the Federal government—a clean, sure, inexpensive collection of the entire amount. The American Telephone and Telegraph Company alone turned over to the Federal government in Federal sales tax collections $170,000,000 last year, without any cost whatever to the government.

The same money distributed among a million or more utility consumers would simply disappear in large amounts. Some of it might find its way back to the Treasury in dibs and dabs through liquor taxes, cigarette taxes, and other items the utility consumer might buy. But it is clear that Uncle Sam would collect in this way only a small fraction of what he would get if the utility paid its tax.

IF we take the other alternative—namely, that the utility rate reduction would not lower revenues collected from the public, but only increase the amount of service rendered for such revenue—we have an even less desirable situation from a standpoint of wartime economy. As a matter of fact, the history of electric rate reduction (and, to some extent, the history of other utility reductions) seems to indicate that lowering rates does result in increased use of service almost to an extent that can be mathematically predicted.

The obvious difficulty is, at this particular time, that increased public utility service is the last thing we want to encourage. The Office of War Utilities of the WPB has been trying for the last year, through an intensive campaign, to discourage the unnecessary use of gas, electricity, and communication facilities. Cutting down on consumption of such service means saving tons of coal and other fuels, conserving critical materials and man power so vitally needed in our war effort.

AGAIN, there is a serious question of social ethics involved in any program for systematically diverting money (which would otherwise be paid in taxes) to the benefit of local ratepayers of a particular utility. By what right should the domestic ratepayers of Detroit, for example, be entitled to these funds? Did they create this wealth which would otherwise be taxable by the Federal government? Were they, *as ratepayers,* in any way responsible? The result is largely due to industrial and off-peak use during the entire twenty-four hours, and on Sundays and holidays.

It is not necessary to labor the point to see, readily, that in the case of a

utility's excess profits tax liability, regular domestic customers have relatively little to do with the creation of the surplus earnings. Excess profits taxes, so-called, are really war taxes levied by Congress on companies which find themselves earning more, during the war, than they did during a base period estimated as normal operation. The result of this formula is quite artificial and often a geographical accident. Companies operating in areas where war plants have been installed may suddenly find themselves taking in more money because of the war boom. Companies not so situated have experienced little or no change.

And so in Detroit, as in other war-boom cities, we can look to Army and Navy contracts and the tremendous expansion of manufacturing plants, such as those of General Motors, Chrysler, the Ford Company, and so forth, which used up the vast bulk of the extra power, as responsible for the greater part of the extra earnings. These are the earnings which resulted in the utility's excess profits tax liability of so many millions of dollars. Some of the increase, of course, is doubtless reflected in the extra domestic load resulting from more workers coming to Detroit, adding to the domestic load.

Aside from that portion of the increased earnings actually attributable to greater sale of service to Detroit's domestic ratepayers, *as ratepayers,* the fair question arises: It can be forcibly argued, why should the rest of the extra earnings be turned over in the form of rate reductions to a group of local ratepayers who had no part in its creation?

Does anybody have the right to these earnings? Assuming the validity of the excess profits tax, as we must, the answer is clear: The Federal government has such a right. It was the Federal government, through its war contracts, which was chiefly responsible. It would seem to be only fair that, if the extra money is turned over to anyone, it should be turned back to the same Federal government in the form of taxes. In this case, the Federal government means the Federal taxpayers, including you and me and every other resident of America who contributes a penny to the Federal government by way of taxes.

TAKING our tax money in the form of payment for Federal war contracts, and producing wealth in the form of extra earnings in Detroit, to be turned over to a group of local citizens in Detroit for their special benefit can be argued to be unjustifiable subsidy.

There is no good reason why the city of Detroit has any right to impose self-profiting conditions because it happens to be the host to an extraordinary

"PUBLIC *utilities contribute a large share of local real estate taxes where plant and equipment are situated. When we find tax rates in many cities and towns of Massachusetts running over $40 a thousand and as high as $50, we can imagine what the tax rate would be if the utility property did not take up a substantial part of the load which otherwise would fall altogether upon the tax-burdened home owner.*"

amount of war work. Suppose, for the sake of simplicity, that the city of Detroit had frankly served notice in the beginning of the war to the Army and Navy: "You can give contracts to manufacturers located in our city only on one condition; namely, that you also undertake to pay a substantial portion of the gas, electric, and telephone bills of every Detroit resident."

That is oversimplification, of course, but the analogy appears to be clear. We can readily imagine, in such a case, the storm of protest that would go up from the rest of the country against the attitude of a single American city. Accusations of selfishness, blackmail, highjacking, and other terms equally impolite, might well be leveled at the great city of Detroit by her sister communities and hinterlands throughout the states.

In all fairness, we must remember that the people and authorities of Detroit, who are presumably as patriotic as anybody else, served no such notice and have avowedly asked for no such subsidy at the hands of the rest of the Federal taxpayers. But, in effect, is not that exactly what happens when a city tries to grab Federal taxes resulting from war-boom earnings, whether the grab is in the form of a local tax or a local rate reduction?

FINALLY, the term "capitalist" in utility rate determination hardly fits when we look beyond the fiction of corporate existence to find, in public utility investment, the extent to which small investors are represented in the industry. This money collectively represented by the corporation really impersonates "public money," and not strictly private capital of the few, although there may be large stockholdings in the industry. It is the idea of "public money" that created the basis of national concern through the institution and functioning of the Securities and Exchange Commission, together with state commissions, which are able to banish stock manipulations and former abuses forever.

If utility management can keep electric rates somewhere down to present charges, in face of all these adverse factors, it is a notable achievement, for which state regulation should receive a full share of the credit due. Such an achievement would have been regarded as impossible a decade ago when taxes took about one-half of what they do now, and were then a cause of serious alarm. It would seem that any charge that rate regulation is standing by and permitting unjust enrichment in this industry, or passing on of undeserved obligations to the public, lacks that foundation in fact that should accompany such a claim.

What is likely to be the postwar future of the utility industry? John H. Squires, Jr., field supervisor of Westinghouse Electric & Manufacturing Company, recently addressing the Massachusetts Coöperative Bank League, gave some thoughtful and interesting views on this subject. This expert sounded the warning that one of the nation's leading economic problems would be the modernization and repair of the homes already in a stage of serious deterioration.

THE gist of his message is that utility service, especially electricity, must take a much greater part and responsibility in the postwar standard of living. Utilities are going to be

called upon to rearrange their plant to fulfill this responsibility. This, in addition to taking care of a backlog of ordinary deferred maintenance for which neither man power nor materials are presently available to service. Ironically, much of the present tax liability of utilities stems from their present inability to expend money for maintenance, which can only be accomplished in a postwar era when revenues may not come so easily. In other words, now that the utilities have the money to do these jobs, they can't spend it because of war restrictions and the tax collector gets it; later on, when the restrictions are removed, they may not have the money to spend.

Summing up this discussion on passing utility taxes on to the utility consumer, the following conclusions are submitted:

1. Any tax made on the utility corporation, as such, should be charged to operating expenses; or, if charged to corporate surplus, utility earnings should be adjusted so that an over-all fair rate of return for the investor should not be imperiled.

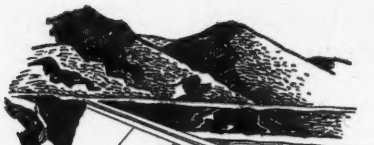
2. The fixing of utility rates should be determined (as heretofore) on the basis of yielding a fair return on the utility investment, entirely independent of what liability a particular utility may have at a particular time, for the payment of so-called excess profits taxes, or other taxes.

3. Rate reductions based on increased earnings of utilities due to temporary war conditions should be related to the increase in business for which such utility ratepayers, as ratepayers, are responsible. It might also be well to have them in the form of discounts, bonuses, or other temporary devices so that the public will understand that such benefits may not continue indefinitely when the war boom has passed and extra earnings disappear.

4. Federal tax liability based on increased corporate earnings due to Federal war activity should result in Federal tax payments to the Federal Treasury without any diversion for unearned local benefit. Federal taxpayers in general should not be called upon to subsidize local communities. We are one nation engaged in one great war.

"PERHAPS *the country needs a good 5-cent cigar. Since I do not smoke, I would not know; but I do know that America needs an exodus out of Washington. We should let the world know too that Santa Claus has migrated back to his old home near the North Pole and that he is going to remain there. The United States has had thirty-two Presidents. One of them in his occupancy in the White House has spent far more than twice as much money as all the other thirty-one Presidents together have spent, and may I whisper that practically all of it was borrowed money, too. That is not an enviable record. That is a rotten record. We must go to a balanced budget the moment the war is over even if it means grass growing in every street in Washington, D. C. Unless we do so, not only will the Treasury be bankrupt but our credit will be destroyed also.*"

—EDWIN C. JOHNSON,
U. S. Senator from Colorado.



Dams As Postwar Projects

All of the utilities, declares the author, would feel the effect of even half of the huge multiple-purpose construction now proposed for the purpose of opening some 6,000,000 acres of arid land for agriculture.

By R. M. TOWNSEND

LATE in 1943 Secretary of the Interior Harold Ickes announced Federal plans for postwar irrigation which would open some 6,000,000 acres of now arid land for agriculture. An article by Ickes in the December 5th issue of *This Week* magazine, a Sunday supplement distributed by scores of newspapers, outlined the project with particular reference to the use of such new land as homesteads for war veterans.

This proposal by Roosevelt's Secretary of the Interior may inject into the forthcoming presidential contest a very old political appeal. In the ancient Roman republic the apportioning of farms to discharged troops was common. This practice continued into the period of the empire, until the more finicky soldiers of that corrupt era wangled doles of cash and grain enabling them to live in the idleness of dissipation and circuses.

Land for veterans has been a recurrent issue in the United States. The "forty acres and a mule" sloganed by carpetbaggers to get colored votes during reconstruction had its counterpart in proposals of more generous homestead measures for Union Army men. But the nation's swiftly expanding industrial life and other opportunities soon absorbed the returned veterans, and homestead agitation on their account waned.

Yet nothing as ambitious in scope as Ickes' project has ever entered veterans' relief discussion in America. It calls for spending $3,000,000,000 of Federal funds over a 3-year period following the end of hostilities. This outlay would be used to create flood-control systems whereby the impound-

ed water of numerous areas would supply both electric power and irrigation. The magnitude of the proposed construction may be judged from the fact that the announced total of $3,000,000,000 which would be needed to achieve it is more than the aggregate reported revenue of all the electric light and power companies of the United States, private and public, for the year 1940. That is roughly five times the reported cost of the Panama canal, twice the value of the United States wheat crop in 1940, five times the value of our cotton crop the same year, equal to the market value of all the motor vehicles produced in this country in 1940, and roughly equal to the total worth of all our exports of all commodities combined in our last year of peacetime trade.

If a construction program of such gigantic proportions is undertaken as proposed, its significance to the entire utility industries is readily apparent. Manufacturers of all classes of electrical goods will feel the effects of such large-scale increases in demand. Railroads in large areas will experience stimulation of business in localities heretofore unimportant.

Much of the proposed development would be in the Missouri river drainage basin, embracing large portions of Montana, Wyoming, Colorado, North and South Dakota, Iowa, Kansas, and Missouri, and all of Nebraska. The reported crop value for this whole region for 1940 was given at $647,577,000, exclusive of livestock yields.

According to Bureau of Reclamation estimates, outlays in the Missouri basin alone would total some $867,000,000. That is the sum set forth in a plan by W. G. Sloan, an engineer of the bureau mentioned, in the autumn of 1943. For $867,000,000, he said, reservoirs to hold 47,000,000 acre feet of water could be built in the Missouri basin, capable of irrigating 4,400,000 acres of land. One of Mr. Sloan's proposed reservoirs would be large enough to store 16,000,000 acre feet. Mindful that the total annual average flow of the Missouri near its mouth is given at only 40,000,000 acre feet, the implications of the Sloan proposal in terms of water storage are evident.

But likewise evident is the extent to which such conservation of water in the upper reaches of the river might affect the level of the stream lower down. Two strong factions, headed by the National Reclamation Association on one side and the Mississippi Valley Development Association on the other, are reported to be busy gathering support for their respective stands. Politically, the problem is delicate for the House Committee on Flood Control in Washington.

Some government engineers are frank to say that the outlay is not expected to be justified on a basis of agricultural benefits alone, nor electric power alone, nor flood control alone. But on a basis of benefits in all categories, they contend, the construction is feasible from a standpoint of cost relative to public worth.

In his advocacy of colossal postwar outlays for irrigation, Secretary Ickes lays chief emphasis on his homesteads-for-veterans objective. He argues, regarding the proposal to spend $3,000,000,000 in the nation as a whole, including the Missouri basin, that this sum disbursed for multiple-purpose

dams would suffice to put 480,000 men to work and keep them busy for the full three years until the construction program could be completed. According to his outline, the land opened to irrigation would provide continued employment for veterans on homestead farms.

BECAUSE of this employment issue, it is likely that future discussion of the project in Congress and out will show such a mixture of arithmetic and sentiment, votes and veterans, that the economics of it will be hard to get at. But whether such huge construction is warranted in terms of new land requirements or our national food needs, will probably not determine whether it will be undertaken. There are reasons for expressing the belief that much of the proposed outlay of $3,000,000,000 will be voted by Congress in any event, regardless of who is elected President in the forthcoming election. Both major political parties may be expected to offer public works construction programs in varying degree and kind as means of maintaining employment. And there are strong pressure groups favoring both flood-control and irrigation projects. Judging by advance publicity symptoms, the Missouri river basin will figure in some measure, and probably extensively, in any postwar multiple-purpose dam program.

Both the U.S. Army and the U.S. Department of the Interior have had engineers busy making surveys in the Missouri basin. Army Engineers demand that any irrigation and flood-control system for the upper Missouri and its tributaries must be so arranged as to assure a 9-foot navigation channel between St. Louis and Sioux City.

OF course the "navigation" feature embraces more than merely a depth of water sufficient for certain sorts of boats. It is a way of arguing for a constant volume of water which will not fall below a minimum level because of subtractions nearer the source. Army Engineers declare that the essentials of flood control and irrigation and electric power can be achieved without sacrifice of the stream volume to an injurious and unfair extent along the lower reaches. Communities bordering these lower reaches—those from Omaha down particularly—are alert to oppose any project which would impound water in amounts to affect the normal level of the river where it traverses their territory.

At the same time, these communities along the lower Missouri anticipate direct benefits from storage dams which would conserve water sufficiently to prevent floods. Between the localities seeking as much water as possible

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¶ "LAND *for veterans has been a recurrent issue in the United States. The 'forty acres and a mule' sloganed by carpetbaggers to get colored votes during reconstruction had its counterpart in proposals of more generous homestead measures for Union Army men. But the nation's swiftly expanding industrial life and other opportunities soon absorbed the returned veterans, and homestead agitation on their account waned.*"

for irrigation along the upper river and those insisting on a high average stream depth along the lower river there is naturally some regional conflict. To try to effect the most amicable compromise, the governors of the eight states chiefly concerned have formed a conference committee. Each governor serves only *ex officio* on this committee, and is represented by two active delegates of his own selection. The only Missouri basin state thus far missing in the group is Colorado, which is expected to join shortly. Two tributaries of the Missouri, the Republican river and the South Platte, rise in Colorado. But as Colorado has first access to the water of these streams, and has already developed them extensively, residents of that state have little to be alarmed about relative to the situation in general.

THE Mississippi Valley Development Association is defending the high normal level doctrine. Speaking before this body at a meeting in St. Louis in October of last year, Colonel Miles Reber of the United States Army Engineers said that his detail had been working on ways and means of developing Missouri basin projects since 1927, the year following disastrous floods.

"There is enough water in the Missouri basin to answer the major demands of all users," he said, "provided it is used sanely, efficiently, and with broad vision for the good of the entire valley rather than that of special interests."

In that statement Colonel Reber repeated almost word for word the declarations of all the bureaus and agencies and departments and associations heard from to date on the subject. The difficulty arises because such terms as "fairness" and "special interest" have different meanings up and down the 2,700-mile length of the Missouri between western Montana and the junction of the stream with the Mississippi near St. Louis.

Regarding population groupings, it may be noted that the areas expecting to benefit from irrigation are much less populous than those insisting on no interference with normal stream flow. There are only 3,200,000 people in all the thinly settled upper reaches of the Missouri, including the Dakota and Montana regions and parts of other states. But there are 9,500,000 people in the regions traversed by the stream after it emerges from the arid lands into the corn belt.

THUS the probable weight of the navigation-depth faction in Congress will be much greater than that of the more-water-for-irrigation faction. But counterbalancing the weakness of the irrigation regions in direct representation will be a considerable measure of support from Congressmen in the nation at large who may wish to back a project of veterans' relief. The present administration is generally believed to lean strongly toward the public power and irrigation program.

Of course, the question of navigation alone is not supremely important. The shipping to and from such cities as Omaha and Sioux City is not of impressive volume relative to the sums mentioned by Secretary Ickes. But apart from economic issues, public sentiment is commonly fiercely contentious where water rights are at issue. The whole history of water development in

Reservoirs in the Missouri Basin

"ACCORDING to Bureau of Reclamation estimates, outlays in the Missouri basin alone would total some $867,000,000. That is the sum set forth in a plan by W. G. Sloan, an engineer of the bureau mentioned, in the autumn of 1943. For $867,000,000, he said, reservoirs to hold 47,000,000 acre feet of water could be built in the Missouri basin, capable of irrigating 4,400,000 acres of land."

the American West emphasizes that. Besides the dollar value of running water as an attraction to industry, even the scenic value must be taken into account. Cities and towns established on broad and full-flowing rivers do not choose to find themselves suddenly bordered by streams which subside to half-dried beds of ugly mud for a portion of each year. There is an intangible value in ample water that is hard to compute.

IN his outline of last December, Secretary Ickes declared that "by far the major part of the investment would be returned to the Federal Treasury directly from irrigation and power revenues." He was referring to the outlay of $3,000,000,000 for multiple-purpose dams in the country as a whole, with a third or thereabouts of the sum to be spent in the Missouri basin. In the same pronouncement, Ickes stated that no less than 225,000 men would be employed in factories producing the materials required in the construction work at the dam sites and related power installations. These 225,000 men were included in the total of 480,000 assertedly employable in all phases of the $3,000,000,000 proposed appropriation.

Mr. Ickes continued:

> The irrigation of 6,000,000 new acres would provide ample farms for 125,000 men and their families. The supplemental irrigation would make available 40,000 more farms. . . .
>
> But putting 480,000 men to work at construction, and locating another 165,000 men and their families on farms where they could become self-sustaining, is only the beginning. For every family that would take up land, one additional family would find a livelihood in the villages and towns that would spring up in the wake of the development, and a third family, elsewhere in the nation, would gain a living by providing the farm implements, automobiles, clothing, etc., which residents of the new communities would require.

DAMS AS POSTWAR PROJECTS

SPEAKING before a meeting of the National Reclamation Association in Denver on October 29, 1943, Chief Engineer S. O. Harper of the Bureau of Reclamation, a U.S. Department of the Interior agency, stated that a total of 195 reservoirs has already been constructed in the arid western third of the Missouri basin. These 195 existing reservoirs, Mr. Harper said, have now a storage capacity of 27,000,000 acre feet, and serve to irrigate some five million acres of land. Recalling that the average annual flow of the Missouri near its point of discharge into the Mississippi is only 40,000,000 acre feet, it would appear that the means of flood control have advanced far already.

Some of the figures in recently submitted development proposals for the Missouri are puzzling. For example, we are told that the Missouri's average annual flow is 40,000,000 acre feet. We are told that 195 dams now in operation upon the upper reaches of the river have a storage capacity of 27,000,000 acre feet. On top of these figures, we find that proposed new reservoirs are scheduled to have a storage total of more than 47,000,000 acre feet at sites along this same river. So in brief, we are confronted with plans of aggregate water storage amounting to 74,000,000 acre feet on a stream which averages only 40,000,000 acre feet of discharge at its mouth over a 13-year test period, counting flood years.

OF course from the standpoint of flood control and power, reservoirs at successively lower levels, as along the Tennessee, provide extensive renewed use of impounded water. But where the accent is upon irrigation, as in the arid upper reaches of the Missouri, the casual inquirer delving into the Missouri basin projects is moved to wonder where all the proposed water will come from. The wonder increases upon remembering the bitter insistence of the lower Missouri communities upon continuance of the 9-foot navigation depth from Sioux City on down. This observation is made, not to take issue with responsible engineers who have given this problem long study, but to indicate the bewilderment of anyone moderately familiar with irrigation problems in the face of the figures officially set forth.

According to Harry Bashore, commissioner of the Department of the Interior's Bureau of Reclamation, the investment of the Federal government in facilities for the conservation and use of western water resources now totals $870,000,000. Thus the proposed Federal projects for the Missouri basin alone would equal the entire Federal investment in dams and power now outstanding in the western states, and the aggregate of Secretary Ickes' postwar multiple-purpose dam projects would exceed three times the entire present western investment of the Federal government in such ventures. It may be assumed that the electric power generated from the proposed dams would be federally developed, and in the event of the Roosevelt régime's continuance in office, it may reasonably be assumed that the Federal government would hold title to the plants.

CONSIDERING further the statements of Chief Engineer S. O. Harper of the Bureau of Reclamation, here are figures from his presentation of last October 29th at the Denver meeting

of the National Reclamation Association:

> Outlay by U.S. Army Engineers to date for flood control and navigation between Sioux City and St. Louis, $325,000,000.
>
> Approximate outlay to date for irrigation works upon upper reaches of Missouri, $325,000,000.
>
> Acreage now irrigated upon Missouri and tributaries, 5,120,000.
>
> Figures outlined below are for the proposed postwar outlays.

AMONG the outstanding construction items of the proposed Missouri basin reservoirs are the Oahe with 16,600,000 acre feet capacity, the Fort Randall with 3,400,000 acre feet, Canyon Ferry with 2,000,000 acre feet, and the Mission with 1,000,000 acre feet.

Oahe and Fort Randall are on the Missouri in South Dakota. Canyon Ferry is on the Missouri in Montana. Mission is on the Yellowstone in Montana.

Mr. Harper said it was believed that the irrigated lands brought under cultivation would repay $258,000,000 of the estimated total cost of $867,300,000 of all the ninety new projects proposed in the postwar outlay for the Missouri basin. He predicted increases in crop returns to the extent of $80,000,000 per year. These figures, it may be explained, represent in effect the official stand of the Bureau of Reclamation, which is under the Department of the Interior, which in turn is under Mr. Ickes. It is to be anticipated that conflicting estimates will be voiced by factions which are less enthusiastic than Mr. Ickes for such vast water storage reservoirs in the upper Missouri basin. It is generally reported that U.S. Army Engineers assigned to the problem are more conservative in their expressions.

BUT whatever the political eventualities of coming months, it is reasonable to predict that considerable new flood control and irrigation works will be undertaken by the Federal government in the immediate postwar era. Large and strong groups in both major parties want it. Factional interests will hence be likely to differ as to amounts and locations more than upon general aims. Coming at a time when our electrical goods industries will have heavy demands from abroad, for the rehabilitation of Europe and to meet arrears of supply elsewhere abroad as well as at home, the expenditure of $3,000,000,000 for projects in which hydroelectric

Sub-basin Considered under Project	*Acre Feet Capacity of Proposed New Reservoirs*	*New Acres to Be Opened for Farms*
Kansas river	2,877,000	286,400
Platte and Niobrara rivers	460,000	475,000
South Dakota tributaries	976,000	911,000
North Dakota tributaries	347,000	62,100
Montana tributaries, excluding Yellowstone	1,365,000	425,700
Yellowstone basin	4,250,800	727,900
Missouri main stream	36,953,500	1,513,000
Totals	47,229,300	4,401,100

power would figure prominently would pose new production problems for American manufacturers. Shifting to more conservative figures to make allowances for political and regional interest compromises, the spending of even half that huge total would create unprecedented peacetime production schedules. Likewise, the mobilization of some hundreds of thousands of Americans to new employment centers in areas now largely desolate and thinly populated, and their settling there to live on farms, would have an appreciable effect upon a number of western railroads.

All utilities, in fact, would feel the effects of even half of the huge multiple-purpose dam construction now proposed.

GOP Champion on the Telephone

A RECENT *item in* TELEPHONY, *journal of the telephone industry, commented on published accounts of Republican Presidential Candidate Dewey's dislike of the telephone and the fact that he does not have one on his gubernatorial desk in Albany. On the contrary, says the* TELEPHONY *story, Dewey makes very intelligent use of the telephone by a little office technique he has devised. It is true, he doesn't keep a telephone on his desk or anywhere else in plain sight; he prefers to keep it in a handy little compartment.*

"The Dewey technique," the story continues, "is simply a variation of the old wink-or-blinker system still used by city editors in the newsrooms of most large daily papers. (Under this system, the boss merely listens in on the call, while the girl at the switchboard coyly cross-examines the party to find out what's on his mind, if any. If the great man smiles or winks, the call goes through, but if he sniffs or grows bug-eyed with rage or alarm, the PBX prima donna either sweet-talks the pest right off the line or passes him along to some patient underling. Fine for running clear of bill collectors, in-laws, indigent classmates, etc.) Dewey does something like this with buzzers and a double tier of secretaries."

Who Owns American Enterprise?

The charge has been made that public utilities and other large branches of American industry are suffering from the concentration of corporate control in the hands of relatively small, wealthy groups located in New York city and elsewhere. This, in turn, has given rise to charges of "absentee management" and similar complaints. But who actually owns the controlling interest in these gigantic enterprises? Here is a surprising analysis.

By ERNEST R. ABRAMS

WHO owns the business enterprises of America? Not small concerns like independent groceries, drugstores, and garages, but large corporations doing business on a national scale or serving wide sections of the land. For years politicians have been telling us it's Wall Street. Could it possibly be Main Street?

The latest and most complete study of the distribution of stock ownership in the United States was made by the Securities and Exchange Commission for the Temporary National Economic Committee and covered the three years ended with 1937. Actually, the SEC made two surveys: TNEC Monograph No. 29, containing 1,557 pages and weighing 3⅝ pounds, which presented the distribution of ownership of the 200 largest nonfinancial corporations in the country, and Monograph No. 30, containing but 258 pages, which covered share holdings of the 1,710 corporations with securities listed on national securities exchanges. And while the 200 companies dealt with in the former survey were among the 1,710 covered by the latter, the investigation of the 200 "big boys" was in much more detail than that of the larger group.

IN brief, this is what the SEC found. Ownership of the common stock of the 1,710 corporations was represented by 11,433,000 separate holdings. A little over half had a value of $500 or less, about one-seventh between $501 and $1,000, and only one-twenty-fifth of more than $10,000 each. In addition, these same corporations had 2,376,600 separate holdings of preferred stock. Slightly less than half were worth $500 or less, one-sixth between $501 and $1,000, and a little more than

one-twenty-fifth of more than $10,000 each. On the average, common stock holdings were worth $3,087 apiece and preferred stock holdings $2,903.

The SEC further found that slightly more than half of common stock holdings were of 25 shares or less, representing one-twenty-fifth of outstanding shares; a little over two-fifths were between 26 and 1,000 shares, representing slightly over a third of the stock; and 1.3 per cent of holdings were of more than 1,000 shares each, comprising a little over three-fifths of the outstanding common shares. Of the preferred stock about seven-tenths of holdings were of 25 shares or less, comprising a little more than one-tenth of outstanding shares; nearly three-tenths were from 26 to 1,000 shares each, representing slightly more than four-tenths of preferred stocks; and 1.2 per cent were of more than 1,000 shares each, comprising close to 47 per cent of all outstanding preferred shares.

The 1.3 per cent of common stock holdings and 1.2 per cent of preferred stock holdings of more than 1,000 shares each were not, however, owned entirely by individuals of great wealth. By far the majority of these holdings were registered in the names of life insurance companies, charitable and educational organizations, investment trusts, brokers and banks or their nominees. Actually, these large blocks of stock, although registered in a few names, were held for the ultimate benefit of hundreds of thousands of individual investors, beneficiaries of estates, life insurance policy holders, savings bank depositors, and the like.

The GE Employees Securities Corporation, for instance, owned 529,000 shares of General Electric stock at the close of 1943 for the benefit of 42,263 employees. In addition, 450 brokers or banks and their nominees held some 6,810,000 shares of GE stock for the benefit of more than 12,000 individuals not registered as stockholders on the company's records. But if these more than 54,000 nonregistered owners of General Electric stock were added to those of record, the number of stockholders at the end of 1943 would have been increased by 24 per cent, while the average holding would have been reduced from 126 shares to 102 shares.

When it came to the 200 largest nonfinancial corporations, the SEC found they had nearly 850,000,000 shareholdings, of which about 4,000,000 were worth $500 or less, with an aggregate value of about 3 per cent of that of all outstanding shares. Another 1,375,000 holdings were worth from $501 to $1,000 each, making up another 3 per cent of total value, while 415,000 holdings were worth more than $10,000 apiece, and accounted for around 70 per cent of the total value of the outstanding stock. But here again institutional investors, banks, and brokers held much of the stock for the benefit of others.

THE SEC also delved into the field of stock ownership in general. It found that individual Americans owning corporate shares, after duplications were eliminated, probably numbered between 8,000,000 and 9,000,000, although they might range from 7,000,000 to 10,000,000. Excluding all persons who were indirect stockholders through ownership of life insurance policies, savings bank accounts, and the like, the SEC decided that less than one

in five persons receiving incomes owned corporate stock. It estimated that the average stockholder owned shares of three different issues and in two and one-half corporations, but that considerably over half of all stockholders owned shares of one issue only.

The SEC concluded that the large proportion of American stockholders owned relatively small amounts of stock and that the dividends received constituted but a minor part of their total incomes; that about half of all stockholders had an average annual dividend income of less than $100, and that their holdings were worth less than $2,000 apiece on the average. Nevertheless, the SEC found that dividends in 1937 represented about one-fifteenth of the aggregate annual income of all individual stockholders, while they constituted about one-sixth of the total annual income of individual stockholders filing Federal income-tax returns. And it added that some two-fifths of all dividends paid in 1937 were received by persons having income of less than $5,000 per annum, or by endowments and other nonprofit organizations.

In commenting on large holdings of corporate stocks, the SEC said that at the end of 1937 more than a third of the stock of all American corporations was owned by other domestic corporations, about 1 per cent by nonprofit organizations, and between 2 per cent and 3 per cent by foreigners. The remainder, or somewhat over three-fifths of the total stock outstanding, was owned by domestic individuals, estates, and trusts, with the latter accounting for somewhat over a tenth of the outstanding shares. And it noted that about a tenth of all stocks, representing nearly two-tenths of all shares held directly by individuals, was registered in the names of brokers.

PROOF of this was evidenced by data presented in the voluminous appendix to Monograph No. 29, which showed that New York Life Insurance Company was the largest single stockholder at the close of 1937 in 12 of the 200 largest nonfinancial corporations, Metropolitan Life was the largest in 10, Sun Life of Canada in 7, Prudential Life in 7, and Equitable Life Assurance in 3. Among brokers, E. A. Pierce & Company was the largest single stockholder in 5 of the 200 corporations, and J. S. Bache & Company in 3. These life insurance companies, of course, were merely registered holders of this stock for the benefit of others, while the brokers were but the nominees of the actual owners.

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Yet the existence of these large holdings tended to distort the true picture of stock distribution and ownership in the United States.

Even the elaborate statistics presented in the two SEC-prepared monographs do not portray accurately American stock distribution. Many times in the past, owners of closed corporations, in which families or closely knit groups owned all the outstanding shares, have distributed just enough of their holdings to investors to meet listing requirements, but have continued to own the bulk of the outstanding shares themselves.

The major reasons for this limited type of distribution generally have been, first, to permit sales in a free market as a basis for appraising the estates of deceased group members, and, second, to provide a market for the stock in the event any member of the group was forced by circumstances to realize on a part of his holdings. Yet, except for this limited distribution, these corporations might justly be classed with such enterprises as the Ford Motor Company, all of the shares in which are owned by one family and are not listed on any stock exchange.

So far, we have been looking at the forest. Suppose we look at a few of the trees. Let's examine the distribution of ownership of six large corporations active in widely diversified fields of endeavor. Their shares are held by investors in every corner of the land, as well as in most foreign countries, and their combined share holdings aggregate 1,663,573 or slightly more than one-eighth of the 13,809,600 shareholdings of the 1,710 corporations with securities listed on a national securities exchange at the end of 1937. They are American Telephone and Telegraph Company, General Electric Company, General Foods Corporation, General Motors Corporation, the North American Company, and United States Steel Corporation. Size and availability of stock distribution studies alone are responsible for their selection.

At the close of 1943 American Telephone and Telegraph had 651,711 stockholders, of which 181,992 were men, 364,582 were women, 65,936 were joint accounts in which two or more persons owned the stock, and 39,201 represented all other classes of holders. Furthermore, of these 651,711 stockholders, 207,733 owned from 1 to 5 shares each, 141,202 owned from 6 to 10 shares each, 151,245 from 11 to 25 shares each, 115,898 from 26 to 99 shares each, and only 35,633 owned as much as 100 shares or more apiece. In other words, 616,078 holders of American Telephone and Telegraph stock, or 94.5 per cent of the total, owned less than 100 shares each, and their aggregate holdings represented 52.6 per cent of the outstanding shares.

More than that, no single stockholder owned as much as one-half of one per cent of the 18,797,202 shares of capital stock outstanding on December 31, 1943, and if the holdings of life insurance companies and other institutional investors were excluded, no single stockholder would have owned as much as one-quarter of one per cent of the outstanding shares. Only 780 stockholders, or less than 12/100 of one per cent of total stockholders, owned 1,000 shares or more apiece.

Employees' Share in National Income

"DURING 1943, the gainfully employed of America, which is the general public, including factory employees, received the lion's share of the national income, or nearly 12 times as much as accrued to the nation's stockholders before corporate taxes were paid. They received roughly 23 times the amount available to stockholders after payment of corporate taxes. And since most workers have no financial stake in the enterprises employing them, they escape the risks and responsibilities that are inherent in ownership of production facilities."

TURNING to United States Steel Corporation, we find it had 3,602,811 shares of preferred stock and 8,703,252 shares of common stock outstanding at the end of 1943. Its preferred stock was owned by 73,086 holders, an average of 49 shares per holder, while it had 165,182 common stockholders owning an average of nearly 53 shares apiece. Since the preferred stock enjoys the same voting privileges as the common, and as we are interested primarily in stock distribution and not the size of dividends paid, both classes of stock will be lumped in examining the character and distribution of holdings. Since, however, 15,666 stockholders owned both preferred and common shares, the net number of stockholders will be used, rather than the sum of preferred and common holders.

At the close of 1943, 104,513 women owned 3,291,770 shares, 101,359 men owned 3,719,821 shares, 13,041 fiduciaries owned 963,992 shares, 15,717 brokers or banks and their nominees held 3,341,109 shares, and 3,523 charitable, religious, and educational organizations, life insurance companies, and other institutional investors owned 989,371 shares. Counting holders of both preferred and common shares but once, 222,602 stockholders held an average of nearly 55½ shares apiece.

By size of holdings, 75,983 stockholders owned from 1 to 9 shares, 82,447 owned from 10 to 24 shares, 31,679 from 25 to 49 shares, 34,524 from

50 to 100 shares, 11,851 from 101 to 500 shares, 1,014 from 501 to 1,000 shares, 616 from 1,001 to 5,000 shares, 85 from 5,001 to 10,000 shares, and 69 owned more than 10,000 shares apiece. In other words, 224,633 stockholders, or 92.3 per cent of total holders before elimination of combined owners of preferred and common shares, owned 100 shares or less, while their aggregate holdings represented 40.3 per cent of all outstanding stock.

These holders of more than 10,000 shares apiece need some explanation, since it might otherwise be assumed they were some of our Wall Street tycoons who dominated the corporation. Actually, a large part of the 2,168,071 shares held by these 69 holders was registered in the names of British and Dutch investment trusts. Of recent origin in this country, investment trusts long have been a preferred medium of investment by the British when seeking diversification of risks, and they have bought shares in these trusts and have received their proportionate share of the trusts' net incomes. But in the Netherlands, it has been the practice to create trusts for investments in individual enterprises—one for U.S. Steel, another for Standard Oil of New Jersey, etc. But whatever the method, the holdings of these trusts are registered in their corporate names, although the shares actually belong to the innumerable investors participating in them.

Of the four remaining corporations, General Electric alone had but one class of stock outstanding, both General Foods and General Motors having one preferred stock issue each, and North American having two of them. But since these preferred shares have equal voting rights with the common stocks, the aggregate of outstanding shares of each company will be used.

On December 31, 1943, General Electric had 28,845,927.36 shares of capital stock outstanding, which were owned by 229,127 registered holders, the largest of which was the General Electric Employees Securities Corporation owning 529,000 shares. General Foods had 5,740,744 shares outstanding, which were owned by 68,210 separate holders, the largest holding being the 358,225 shares held by Marjorie Post Davies. General Motors had 45,939,984 shares outstanding, which were owned by 421,945 stockholders, the largest holding being some 3,500,000 shares owned by supervisory and management groups, plus directors not active in the management. And North American had 9,875,365 shares outstanding, which were owned by 68,636 holders, with the largest being life insurance companies and investment trusts. Distribution of holdings by size is shown on the following page.

At the close of 1943, holders of 100 shares or less owned 23.9 per cent of the outstanding stock of General Electric. In the case of General Foods, whose common stock distribution was analyzed in January, 1943, and preferred stock in April of last year, individual holders of 100 shares or less owned 28.6 per cent of the outstanding stock. And in the case of North American, with stock distribution analyzed as of June 30, 1943, holders of less than 100 shares owned 14.1 per cent of issued stock. Unfortunately, comparable data for General Motors are not available.

Size of Holdings	*General Electric*	*General* Foods*	*General Motors*	*North American*
1 to 10 shares	65,000	19,826	158,000	16,584
11 to 25 shares	52,700	15,607	( ) (179,000)	17,330
26 to 50 shares	43,800	10,241	( )	( ) (17,886)
51 to 100 shares	35,700	6,623	50,855	( )
Over 100 shares	31,927	6,908	34,090	16,836

* Shares held by individual stockholders only.

Ownership of corporate shares is becoming more widely distributed throughout the country. Compared with the close of 1936, the number of stockholders of American Telephone and Telegraph had increased by 10,720 at the end of 1943. Similar increases in stockholders of four of the five remaining corporations were: General Electric 42,727, General Motors 79,561, General Foods 3,595, and U. S. Steel 5,547. North American, on the other hand, had 1,378 fewer stockholders at the end of 1943 than it did seven years earlier. In the public utility field, the number of individuals owning the stocks of operating companies doubtless will be vastly increased over the near-term as a result of the breaking up of holding companies through sale and distribution to the public of the equities of operating subsidiaries.

FURTHER evidence of increased ownership of corporate stocks by more people may be found in data reported for 1940 by the U. S. Department of Commerce and the Treasury Department. While the former placed the total amount of corporate dividend payments in 1940, excluding intercorporate dividends, at $4,150,000,000 statistics of the latter indicate that 47 per cent of these payments were received by individuals having net incomes of less than $5,000 a year, or by nonprofit organizations, individuals not filing Federal income tax returns, or small stockholders filing returns but failing to report separately any dividends received. Although not comparable in every respect, it is worth noting that the SEC placed at 41 per cent of the total the proportion of 1937 dividends received by persons having incomes of less than $5,000 annually, or by endowments and other nonprofit organizations.

But if ownership of corporate shares is becoming more widely distributed in the United States, if ownership in the sense of legal or rightful title to capital assets is broadening, it is also true that ownership in the sense of power to manage corporate affairs or to direct corporate activities is becoming restricted. When a few individuals hold most of the shares of a corporation and vast sums of their own capital are at stake, they usually play a dominant rôle in directing the corporation's activities. But when ownership is as widely distributed as it was in the case of American Telephone and Telegraph at the close of 1943, with no individual stockholder owning as much as one-quarter

of one per cent of the stock, with the 20 largest stockholders—institutional investors included—holding less than 5 per cent of the shares, and with the eighteen members of the board holding in the aggregate less than nine-tenths of one per cent of the stock, few stockholders have the incentive or the time to devote their major attention to conduct of the corporation's affairs.

When this condition prevails, as it does in many companies with securities listed on some stock exchange, direction of the corporation generally is vested in a group of professional managers who, through control of the proxy machinery, are able to perpetuate themselves in office so long as the corporation prospers and satisfactory dividends are forthcoming. But when a group of stockholders with a majority of the voting power loses confidence in the existing management, it may be replaced by another more to the stockholders' liking. This recently happened in the case of Certain-teed Products Corporation. Nevertheless, aside from this latent power to change managements, ownership of corporate shares usually does not mean any effective measure of control over corporate affairs.

THEN, too, ownership of corporate shares may have another meaning, which can be defined as the privilege of receiving, or the right to receive, the revenues produced by the enterprise. And within the confines of this meaning, stockholders are at a decided disadvantage. This disadvantage can readily be indicated by reviewing the experience during 1943 of the six corporations previously examined.

Last year, United States Steel Corporation, with an investment in facilities equivalent to $5,157 for each employee, paid 13 times as much in salaries and wages to employees as it had left for interest on borrowed money and for preferred and common stock dividends. General Motors, with an investment of $1,928 for each employee, had a payroll 9 times the balance of revenues available for capital hire. General Electric, with an investment of $2,295 per employee, had a payroll 10½ times the same balance. The Bell telephone system, including Western Electric Company and the Bell Telephone Laboratories, with an investment of $8,432 per employee, paid 4⅒ as much in wages and salaries as it had left to reward capital. General Foods, having invested $9,064 for each employee, paid them 2⅓ times the sum it had left for interest and dividends. And North American Company, a gas and electric utility system with need of fewer employees than an industrial enterprise, but with an investment of $36,475 per employee, had a labor bill 1¼ times the amount available for capital hire.

Nor is the experience of the six corporations in any way unique. The U. S. Department of Commerce recently estimated that total salaries and wages consumed 69 per cent of the 1943 national income before corporate taxes, compared with slightly less than 6 per cent available for corporate dividends. This balance of 6 per cent, incidentally, is the proportion available for dividends after the payment of interest on borrowed capital, or about three-fifths of the balance of revenues left for interest and dividends. But even when the interest paid in 1943 is added to the amount available solely for dividends,

labor's 69 per cent of national income was 7 times the 9.8 per cent accruing to corporate capital. Labor's share, moreover, is increasing. It represented 64.5 per cent of national income in the low depression year of 1932, and was but 65.2 per cent in the "good old days" of 1929.

Then, too, labor's share of the national income is senior in claim to Federal taxes on corporate revenues, although once distributed to individual workers it is subject to the same normal income and surtaxes levied on corporate dividends in the hands of stockholders. But the 6 per cent of national income available for dividends is substantially reduced by heavy Federal taxes while still in the hands of the corporation, and that portion distributed as dividends is again taxed when received by stockholders. In addition, labor's share is increased by the noncontributory pension, profit-sharing, and retirement plans provided by many corporations without cost to the workers, but which reduce the portion of national income available to corporations for distribution to their stockholders.

It would appear, then, that there are two kinds of wealth. One is the variety that can be spent for the necessities of life, its pleasures and luxuries—for homes, food, clothing, automobiles, radios, refrigerators, movies, and vacations. The other kind of wealth is comprised of tools for producing the spendable variety—of land, factories, mines, and all sorts of equipment and machinery. And this second kind has value only as it can produce goods and commodities which the public will buy at a profit, thereby creating the spendable variety of wealth. Accordingly, as most economists agree, the most important question is not who owns the implements of production, not who has legal title to the nation's manufacturing facilities, but who has the first claim to the spendable wealth which these tools and facilities produce.

During 1943, the gainfully employed of America, which is the general public, including factory employees, received the lion's share of the national income, or nearly 12 times as much as accrued to the nation's stockholders before corporate taxes were paid. They received roughly 23 times the amount available to stockholders after payment of corporate taxes. And since most workers have no financial stake in the enterprises employing them, they escape the risks and responsibilities that are inherent in ownership of production facilities.

Labor's ability to demand the lion's share of our national income would, furthermore, seem secure. Both in theory and in practice, ours is a democratic form of government, under which the majority rules. And a majority in this country means the gainfully employees—the same people who received 69 per cent of the national income before corporate taxes last year. And with the political power they exercise, with their ability to force their views upon any national administration, there is little likelihood that their proportion of the national "take" will or can be reduced.

Accordingly, although they may not have legal title to the implements of production, they do possess and exercise more control than stockholders.

The conclusion appears inescapable that Main Street and not Wall Street owns American enterprise.

OUT OF THE MAIL BAG

Rates, Taxes, and Terminology

THE Federal government took what looked like a simple action when the present so-called excess profits tax was established, but it is having repercussions because — of all things—of the terminology used.

When we began to move from a peacetime to a wartime economy in 1939, it was generally recognized that a greatly accelerated pace was in store for business. There would be higher costs but, in spite of that, corporate profits would probably increase and some would be greatly swollen. The government was, at the same time, beginning substantial outlays for war preparations, making it necessary to increase taxes where there was ability to pay them. The coincidence was inescapable and the new tax was based on the idea that, if a corporation had been in business during a base period (1938-1941) it could still get along on much the same actual profit during the war boom. Anything it could make in excess of the base amount was assumed to be war profits and the government took 85.5 per cent of it.

Nowhere in this consideration was there any assertion that profits over the base amount were unfair or unjust. The word "excess" was used for its brevity and simplicity and the scheme was frankly a quick and easy means of raising money and "taking the profit out of war." In fact, it completely ignored "fair return" for utilities, the assumption evidently being that if anybody earned more than a fair return in the base period it was up to regulatory authorities to take care of that situation in routine channels, and if returns were less than fair, the company could stand it in war as well as in peace. There was to be no opportunity to recoup during the war.

Recently efforts have been made to have the excess profits tax payments disallowed as an expense item in rate determination, thus at once forcing rates down by the amount of the tax plus enough to forestall further such payments in case of added business. These efforts have several foundations such as the misapprehension that the utilities are growing fat from the war, a feeling that payment of excess profits taxes indicates that rates are unjustly excessive, a public objection to paying additional war taxes when hidden in utility bills, and an objection to the wide variation in war contributions by customers through this tax because of the differences in proportions of gross paid by the companies.

THE main factor that the advocates of immediate substantial rate cuts overlook is the temporary nature of the present situation. The national economy is quite distorted by the war and for this reason the present period cannot be taken as a suitable base for setting future rate policy. Neither did the depression years form such a suitable base, but there was no public clamor at that time for increased rates because of deficient earnings. Indeed, the pressure was then even more strongly for reduced rates, despite lack of any economic basis, because of the reduced individual incomes, a circumstance which emphasizes the opportunistic nature of the demand for reduced rates.

The war boom is temporary, but what of the fact that many corporations are experiencing a considerable amount of increased business and profit remaining after payment of ordinary expenses and ordinary taxes? Under the excess profits tax scheme 85.5 per cent of this new profit, in excess of the amount of the base period profit, is taken to the Federal Treasury to finance the war. So there is no possibility of getting rich off the war and any notion that the utilities are now feathering their nests is a myth.

Is the fact that an excess profits tax is paid a sound indication that rates are unfair and unjust? This premise has been shown above to be in error. Actually, all the payment of this tax indicates is that the company is doing more business than in the base period. The old standards of fairness are still appropriate—the fair value of property and the net available for return.

Now what about the ratepayers of a utility company which sends 10 per cent of its gross to Washington, compared with other ratepayers served by a company which sends little or nothing? In the first place, even the basis for comparison can be argued without end—whether to compare the tax contributions on a basis of dollars, customers, or kilowatt hours. In the second place, if one company sends more per unit (whatever unit) than another it is most likely because the former is experiencing more of the temporary war business and it

does not prove any impropriety or injustice.

Or, again, what if all taxes of whatever nature—and there are many—were to be compared between companies? The answers would show just as wide a variation of the proportional contributions as in the case of the excess profits tax. So would a comparison of any other expense item, such as fuel or labor. Yet there are but few who advocate abolishment of all taxes because of this circumstance. It is inconsistent and indefensible to argue for reduction of rates to avoid only one class of tax.

FOR another approach to this situation, let us look at what becomes of the money thus collected. It goes directly to finance the war and practically everyone agrees that it is badly needed. Suppose this change in rates were applied throughout the United States and the ratepayers were all spared this contribution to the war financing. The Federal deficit would be increased by just that much, which most everyone concedes is an inflationary move and therefore highly undesirable. Moreover, the possibility of recovering the difference through war bond sales is rather poor because the dispersion of this amount will be wide and in such small amounts that individuals will be unable to utilize the saving for added bond purchases.

The average customer pays a bill of $3 to $5 a month and even 20 per cent of this amount is going to be a small item in a household budget compared to food and clothing.

The position of the Federal government is not much different from that of local governments depending on utility taxes for support. To carry our example to its logical conclusion, suppose that all taxes were removed from utilities and that rates were lowered accordingly. Not only would that gap between the rates of publicly and privately owned utilities be greatly narrowed; many a local government and school district would be hard pressed to replace the lost tax revenue. Even aside from the lucrative franchise taxes levied by many cities, the real and personal property taxes paid by utilities bulk large in the economy of state and local governments. In case our system were revised to stop these payments in favor of lower rates, the answer would be the same for both local and national governments—raise some other tax. The reason must be obvious; the same people must pay the tax, for war or peace, directly on tax bills or indirectly on electric bills.

Without attempting to settle the long-standing argument about direct *versus* indirect taxation, and even granting the undesirability of further indirect taxes at present, it can be seen from this discussion that the result of a change of even this one tax will seriously upset the Federal revenue needs at a most undesirable time. Further, if extended to all taxes paid by utilities, it will precipitate a general overhauling of our tax structure which, however desirable, had better be postponed until after the war.

FINALLY, the effect on the utilities of having rates forced down now because of the temporary war boom is bound to be bad for them. Under the present setup the disappearance of the war-inflated revenues will automatically terminate the payment of any excess profits tax and will leave the utilities in a position to carry on with sound financial structures in the postwar period when new outlays will be needed for improved service and stabilized employment.

If the proposed rate reductions are now forced, most of the utilities will come out of the war weakened because the reduced rates applied to the available business will not produce enough revenue to keep the companies sound. This will be a deflationary tendency at a time when there will be many other such tendencies and when the great need will be for corporations able to keep men at work. The alternative would be the highly distasteful rate increase to put rates back up to where they came from.

To summarize, the proposal for lower rates by squeezing out the excess profits tax is glittering and attractive but it has such unwholesome complications that even the ugly term, "excess profits," is a better alternative.

—JOHN E. REED,
Rockford, Illinois.

More on Original Cost

IN the August 3rd issue of the FORTNIGHTLY, I find a letter from Edgar Dow Gilman, director, department of public utilities, city of Cincinnati, which is entitled "Defending Original Cost" and which attempts to answer my article in the June 22nd issue of the FORTNIGHTLY entitled "Fallacies of the Original Cost Theory." Mr. Gilman states that he is "amazed" at the "fallacies" in my assertions.

Mr. Gilman has apparently read this article carefully, and yet construed it as a criticism of "original cost accounting." His whole defense is *not* of the "original cost theory of value," as criticized by me, but is, instead, a defense of the *segregation* of costs in Account 100.5, or "original cost accounting" which was *not* the object of my criticism. My objections were all directed at the program of the Federal Power Commission which treats this accounting classification as an economic finding, or as a limit to value. In other words, my criticism was of an economic philosophy, not of an accounting policy.

The program of the Federal Power Commission, as revealed by every finding and resultant order of this authority, since the initiation of the "original cost" program, shows that all actual costs, segregated in Account 100.5, are indicted as the "cost of intangible values"

the benefits from which *cannot* accrue to *private owners*. While the existence of such intangible attributes as "going value" and "integration value" are admitted, this peculiar economic philosophy defines such values as social values, arising from franchise privileges, the benefits from which must accrue to society. Only under such a concept can all costs, segregated in Account 100.5, which represent recognition, by the purchaser, of intangible attributes, be excluded from the earning base and amortized through Account 537, or out of the investor's equity. The record is replete with orders of the Federal Power Commission which do exactly that.

An economic philosophy which limits the benefits, accruing to private ownership, to a fair return on the "original cost" of the mere physical property, or the mere physical component of an earning entity, and denies to such ownership any benefits arising from intangible attributes attaching to, or inherent in, such entity, is utterly foreign to the American system of private enterprise. It is simply a variation of the Karl Marx philosophy of "frozen labor." The Marx theory limits the benefits arising from the possession of a tool, in the hands of a private owner, to a mere return on the "effort or labor" crystallized in such tool and assigns all benefits arising from intangible attributes to society as *social values*. Only under this philosophy can the right of private enterprise to possess and benefit from values in excess of the bare "cost of physical properties" be questioned.

To me, such a philosophy is utterly foreign to the American concept, which has its foundation in a recognition of the right of the individual to a reward for his effort measured by the value of the service rendered, not by the cost of the tools used in the rendition of such service. Under the American concept, his reward will be measured or influenced by the wisdom and efficiency with which he uses these tools, with free competition furnishing the necessary protection of the public's interest.

Under the American way, the factor of competition contemplates a rivalry of intellect as well as of investment, of ideas and initiative and other intangible attributes, as well as the tools or tangible assets used in connection with an undertaking. Under this concept or form of economy, competition as a restriction or regulation of the reward, or the benefits of possession, is operative only when the possessions are used with the same wisdom. The benefits or value of property or possessions are determined by the ability of the possessor to use, and not his ability to own or to buy. While the cost of twin physical properties might be the same to both John Doe or Richard Roe, this would not, and should not, measure the value to each, or the return thereon. The wisdom and initiative with which the respective properties were used should measure the reward or return.

In the American economy free competition is depended upon to safeguard the public's interests except in certain industries where it was found that the total investment necessary to serve the public could be used to a better advantage, to that public, through the granting of special rights and privileges. In recognition of this economic fact public utilities are granted franchises which provide monopolies over certain territories. In connection with this grant the public retained regulatory powers sufficient to provide the same protection to its interest as was furnished by free competition prior to the grant of monopolistic privileges. These regulatory powers are provided to perform the same function for this industry as that performed by free competition in the free or unregulated industries. A wise and proper use of these powers should leave the same opportunities of reward, or benefits of possession, as remained to the unregulated enterprises, and should recognize, in that reward, the influence of all those economic factors which influence the benefits of possession. A regulatory policy which isolates public utilities by limiting or measuring the benefits of possession to cost, in an economy where all free enterprise operates under rules which make the use of the property the measure, is not the kind of regulation contemplated as a substitute for competition.

. . . The conflict between these two views is not a minor matter. It is not such a difference as can be reconciled within our present form of economy. The two views cannot exist, side by side, in our economic program, one applicable to certain industries and the other applicable to all other industry. They are so radically opposed that each would destroy the very basic fundamentals of the other. An economy, like a people, cannot exist "half slave and half free."

—Joe Bond,
Little Rock, Arkansas.

¶"The *most serious single problem faced by county governments in my district is the ever-increasing ownership of lands by the Federal government. Ten of the eighteen counties I represent are over 50 per cent owned by the Federal government.*"

—Clair Engle,
U. S. Representative from California.

Wire and Wireless Communication

SOME three hundred government officials and representatives of all branches of radio and communications attended a joint government-industry conference in Washington, D. C., August 11th and 12th, under the auspices of the U. S. State Department. The purpose of the conference was preliminary—to prepare for international communication reallocations conferences, to begin as soon after the war as possible.

The sessions were opened by Francis Colt deWolf, chief of the State Department's Telecommunications Division, who turned the meeting over to Dr. J. H. Dellinger, chief of the radio section of the Bureau of Standards and chairman of the technical postwar communications subcommittee of the State Department.

The principal feature of the sessions was submission of a proposal by the Interdepartment Radio Advisory Committee, made up of government radio officials, for the postwar broadcast allocations plan which would provide substantially increased spectrum space for both FM and television, but which would make no provision whatever for international short-wave broadcasting. The IRAC program outlined a proposed allocation covering all communication services and utilizing the ultra-high frequency ranges which, prior to the war, were largely in the experimental category.

The conference was divided into three committees to analyze revisions of the 1932 Madrid Telecommunications Convention and the 1938 Cairo Telecommunications Conference. Arguments for increased spectrum space for various services (radio, television, frequency modulation radio, business services, point-to-point communications, facsimile, etc.) will be analyzed by these committees with the objective of completing the revised allocation by next December.

THE three committees, which will carry on the exploratory work and draw up recommendations, are as follows: (1) to analyze proposed revisions of the international conferences, headed by Harvey B. Otterman, assistant chief, telecommunications division, State Department; (2) on frequency allocations (technical), headed by Dr. J. H. Dellinger, chief of the radio section, Bureau of Standards, and chairman of the technical postwar communications subcommittee of the State Department; and (3) operational matters, headed by Captain E. M. Webster, chief of Coast Guard communications. Committee memberships were voluntary, with industry and government participants in the general session authorized to select their own.

Discussions of the IRAC allocations proposals were held by William B. Lodge, acting engineering director of CBS, who generally favored them; Walter S. Lemmon, president of the World Wide Broadcasting Foundation, and E. K. Cohan, engineering director, both of

whom vigorously condemned the absence of provisions for international broadcasting; Captain Donald S. Leonard, representing the International Association of Police Chiefs, who lamented inadequate provision for facilities for police departments; Major General J. O. Mauborgne, retired, former Chief Signal Officer, who admonished the participants to agree on a viewpoint as quickly as possible, drawing on his experience in past international sessions; Major E. H. Armstrong, FM inventor, who urged that the proposed allocations be left sufficiently flexible to accommodate new developments because it is impossible to predict five years ahead; and C. B. Aggers, of the Westinghouse International Company, who urged consideration of spurious interferences with communications from industrial devices such as diathermy instruments.

THE IRAC plan provides for a total of fifteen 6-megacycle channels below the 300-megacycle band of the radio spectrum, as compared with the present allocation of eighteen such channels for television. Ultimately, television could use thirty-one 16-megacycle channels between 450 and 1,000 megacycles for high definition television.

IRAC made no suggestion as to television standards, pointing out that its plan was sufficiently flexible to permit decisions to be made as to standards and the methods of their establishment. In other words, the suggested allocation would permit not only the continuation of television on proposed prewar standards until such time as improved technique in the art might be practically available, but it would also permit operation on a dual standard basis during a transitional period, as suggested by Commissioner E. K. Jett of the FCC.

In opening the sessions of August 12th, Mr. deWolf explained that about a year and a half ago President Roosevelt had asked Secretary Hull to look into postwar reconstruction.

The department has prepared every five years for a world telecommunications conference. None has been held in eight years, he pointed out, because of the war.

This country must be prepared to go to the next telecommunications conference at the earliest possible date with an integrated plan. Acting Secretary of State Stettinius, he said, has urged all committees to work as rapidly as possible.

Aside from the IRAC allocations report, Mr. deWolf alluded to the need for "traffic control in world radio" and pointed to the proposal on radio regulations which would create a central frequency registration board. This board would be composed of five members of different nationalities elected at the next telecommunications conference to serve as custodians of an international public trust. It would provide for systematic registration of frequencies by all nations and each government, to obtain international priority for the use of frequencies upon assignment or change of assignment, would notify the new board, according to a prescribed procedure.

WALTER S. LEMMON, president of the World Wide Broadcasting Foundation, attacked the IRAC proposal on international broadcasting. He said the United States should be a leader in enlarging and expanding, rather than doing away with this great force. He explained the work done during the last decade by World Wide in building up a "world radio university." He said he did not think the proposed relaying of international broadcasts for local station distribution was feasible.

Stations in other countries are largely controlled by national governments and such programs would be subject to their whim and censorship. Doing away with direct international broadcasts would be a challenge to international free press and free speech, he said.

Urging that the whole question be reopened, Mr. Lemmon said he thought that there should be assigned to international broadcasting in the postwar structure as many frequencies as were

used before the war. It is possible also to multiplex other services on these channels without interference. Moreover, he said, Axis facilities would be available after the war.

On behalf of the IRAC proposal to eliminate international short wave, it was pointed out that about 40 per cent of the space between 4 and 20 megacycles would be required if Great Britain, Russia, and the United States should operate only eighteen transmitters each simultaneously whereas the United States and Great Britain now have thirty-six each. Then thirty of the larger nations would have only two transmitters each and thirty smaller nations would use only one. Four channels would have to be assigned to each transmitter because of the variation in propagation conditions in the high-frequency spectrum. In suggesting that programs be transmitted by point-to-point relay for rebroadcast. IRAC held that it was unable to effect an allocation for the direct international broadcast service and that pending a decision as to the policy to be adopted, it had to assume that the relay method would be employed.

* * * *

WITH rapid strides being made in the development of train communication, sharp competition looms in the postwar period over the type of equipment to be used by the carriers, a recent survey showed. While some railroads are experimenting with radio as a means of end-to-end contact on trains and for communication between dispatchers and train crews, other lines are testing electronic train telephone systems.

Latest development in the use of the electronic system is the announcement of the Pennsylvania Railroad early this month of its first application to the road's main line, between Harrisburg and Pittsburgh, Pennsylvania. The telephone device, providing continuous communication between moving trains and between trains and towers, is to be installed on two main-line, 4-track divisions covering 245 miles of line.

Tests of the electronic system were also planned for August by the Chicago, Milwaukee, St. Paul & Pacific Railroad. Initial experiments were to take place on the road's divisions between Chicago, Milwaukee, St. Paul, and Minneapolis.

The electronic train telephone utilizes high-frequency alternating electric current, which is transmitted by induction to the rails and to existing wires on poles parallel to the tracks. Use of this system does not require allocation of wave lengths, such as are needed in radio.

Due to the necessity of securing high frequencies, which are controlled by the Federal Communications Commission, this agency will be an important factor in the future of railroad radio communication. Many other types of surface carriers have also applied for frequencies, and hearings have been scheduled by the FCC for September 13th to consider this problem.

THE Pennsylvania has had the electronic train telephone in experimental use since June, 1942, on the Belvidere-Delaware branch in northern New Jersey. The new installation, developed in collaboration with the Union Switch & Signal Company, and costing more than $1,000,000, will afford railroad officials an opportunity to work out the adaptation of the new system to conditions in one of the heaviest railroad traffic areas of the country.

Approximately 300 passenger and freight locomotives, ninety freight train cabooses, and six strategically located wayside towers on the Harrisburg-Pittsburgh line will be equipped with the train telephone. Towermen are able to transmit instructions, reports, and information regarding train operations to trains' crews moving in their areas, although they are many miles distant. The crews of two trains several miles apart are also able to communicate by telephone.

Latest refinements in the electronic train telephone have been effected through the pooling of the facilities, laboratory research, and engineering resources of Union Switch & Signal and the General Electric Company, the Penn-

sylvania Railroad announcement said. Due to their collaboration, the train telephone system can now employ frequency modulation and higher carrier currents for transmission. It was noted that this materially increases efficiency and removes any handicap to its use in high static locations.

This type of equipment is said to be especially suited to the western trackage of the Chicago, Milwaukee, St. Paul & Pacific, where trains are hauled by large electric locomotives, making necessary the use of high-voltage power lines. There are also many tunnels along the right of way. Both of these elements are termed hindrances to the use of radio transmission.

Many railroads have been experimenting with radio communication in recent months, including the Atchison, Topeka & Santa Fe, the Baltimore & Ohio, the Seaboard Air Line, and the Chicago, Rock Island & Pacific. A number of tests were conducted in July by the Chicago, Burlington & Quincy with end-to-end transmission on a freight train, including two round trips between Chicago and Denver. The tests took place above 150 megacycles, where frequencies are held more satisfactory for railroad work than lower down. The radio division of the Bendix Aviation Corporation also has been active in the railroad field.

* * * *

CONSTRUCTION of a chain of experimental radio relay stations between Washington, New York, and Schenectady to carry as many as three high-quality television programs and other services simultaneously in both directions between industrial and urban centers is the basis for applications filed jointly with the FCC by the International Business Machines Corporation of Washington, D. C., and the General Electric Company of Schenectady.

The relay stations, except for terminal depots in large cities, would be installed atop high steel masts about 30 miles apart. The channels sought are in the very high frequencies—2,000 to 2,300 megacycles. The channels—six bands in all—would be at least 20 megacycles wide each—as wide as three ordinary present-day television channels.

The stations would be of the type known as "Class 2," or experimental, for relaying signals.

The system would be a postwar project, foreseen as an eventual expansion throughout the country to link terminal writing or printing machines of many industrial organizations, and also as a means of setting up a carrier as a medium of establishing television networks. Development of radio tubes and other apparatus for such experimental work is said to be under way in the General Electric Company's plant.

* * * *

THE Congress of Industrial Organizations is planning to add the control and ownership of radio stations to its side-line activities, which already include the establishment of a political organization to fight for a fourth term for the New Deal, it was recently disclosed.

The *CIO News*, a weekly publication, urged unions to make applications to the Federal Communications Commission now for frequency modulation licenses which, it said, in time of labor disputes will "insure labor a chance to get its story to the public." The possibilities for labor are breath-taking, it said.

The paper charged that commercial radio is monopolized by employer interests and inevitably favors their side. "On all major issues—cost of living, full employment, reconversion, international affairs—labor can use FM to make its views known and its position appreciated," it continued.

The paper declared that "it is absolutely imperative for labor and other peoples' organizations to get in their applications now to FCC if they are not to be left out in the cold in FM broadcasting. Delay will mean that commercial interests will sew up the field, and labor —if it wants to buy time or stations— will find itself confronted with all the old censorship restrictions and with prices prohibitive. . . ."

Financial News and Comment

By OWEN ELY

Electric Bond and Share Company

ELECTRIC BOND AND SHARE COMPANY recently issued its annual report for 1943, which contained a number of interesting charts, tables, and statistics. One fact of general interest is that, according to a formula worked out by Dr. Forest R. Moulton, one kilowatt hour is equivalent to the energy expended by one man laboring ten hours. Thus it would take two and one-half times the efforts of the entire working force of the United States (over 51,000,000 people, working eight hours a day, three hundred days a year) to equal the amount of electricity produced by the Electric Bond and Share system in 1943. This goes far toward explaining the vast mechanical progress achieved by the United States in the production of munitions.

The report points out that in the past eight years, since passage of the Utility Act, holding companies in the Electric Bond and Share system have paid off over $127,000,000 debt, though their cash has decreased less than $2,000,000; and that system's operating companies have constructed new property amounting to more than $568,000,000 and have increased their cash by $95,000,000, while debt increased only $74,000,000.

The report pays special attention to the operations of American & Foreign Power, in which Electric Bond has its largest investment—about $280,000,000, principally cash paid during 1923-30 into that company's treasury for its junior stocks. American & Foreign's

	Millions of Dollars
Net current assets	$11
Marketable bonds of system operating companies, at par	9
Entire investment in securities of United Gas system to be surrendered under proposed plan for cash of	44
Cuban Electric debenture bonds, at arbitrary valuation of 75%	15
American & Foreign Power notes at par	35
American & Foreign Power first pfd. stocks at market	7
American & Foreign Power second Pfd. stocks at market	46
American & Foreign Power common and warrants	*
American Gas & Electric common at market	26
American Pr. & Lt. pfd. and common at market	5
Electric Pr. & Lt. pfd. and common at market	11
National Pr. & Lt. common at market	18
Commonwealth & Southern common	1
Total	$228
Deduct preferred stocks at par value (June 30)	112
Net liquidating value of common stock	$116
Amount per share, $22	

* The common stock and option warrants, with a current market valuation of approximately $9,000,000, are omitted because these securities are considered to be of dubious value.

debt has been reduced over $55,000,000 in ten years, and annual interest charges are now $3,400,000 below the peak figure.

ELECTRIC BOND AND SHARE'S program for retiring its own preferred stock is continuing under an SEC authorization extended to January 2, 1945. A total of $33,895,500 preferred stock was purchased up to June 30th at a cost of $25,122,794. The amount of preferred stock has thus been reduced by about 23 per cent, to $111,670,000. On July 30th, the company had some $6,000,000 cash earmarked for purchases under the present SEC authorization.

Electric Bond and Share's report does not attempt to work out one figure which is of considerable interest to stockholders —the liquidating value of the common stock (after allowance for retirement of remaining preferred shares at par). This estimate has been attempted in the accompanying table, using the December 31st portfolio list (which it is assumed remains substantially unchanged), the June 30th current position, and recent security prices. United Gas Corporation securities have been valued at the figure which the company is willing to accept—$44,000,000—instead of at current market values.

Cuban Electric Company bonds are written down 25 per cent because of the company's somewhat unfavorable record. The final figure works out at about $22 liquidating value for the common stock, compared with the current market price around 10½. The liquidating value will naturally be affected by the prices at which the remaining preferred shares can be repurchased or retired, future SEC decisions regarding recapitalization and subordination, etc.

Corporate Taxes—Will They Be Canceled?

BEARDSLEY RUML (treasurer of Macy's and chairman of the Federal Reserve Bank of New York) gained fame some months ago by his campaign for pay-as-you-go individual taxes, which was finally adopted by Congress in unnecessarily complicated form. Now Mr. Ruml has come forward with another bold idea—that Federal taxes on corporate incomes should be canceled, substituting therefor a 5 per cent franchise tax and a 16 per cent tax on undistributed earnings. Mr. Ruml's idea is that double taxation on dividends—now prevailing through corporate and individual income taxes—tends to prevent a flow of fresh capital into industry.

Mr. Ruml's latest idea seems to have little chance for success, although he proposes that individual taxes be increased if necessary, in order to maintain the flow of funds to the Treasury at the necessary postwar level. Senator George has indicated that he expects excess profits taxes to be reduced as the first step toward normal tax conditions, but Chairman Doughton of the House Ways and Means Committee, which initiates all tax changes, remains skeptical. Senator George took the position that tax schedules could be geared to a Federal budget of around $20,000,000,000—about one-fifth of our present expenditures. But Representative Doughton insists there is no way to figure future taxes because "nobody can tell a thing about the budget, as long as we keep on passing bills that call for spending money after the war." Presumably Mr. Doughton had reference to pending bills to pay out huge amounts to all war workers unemployed in the postwar period, foreign relief plans, the proposed international bank, etc.

BUT support for the new Ruml Plan comes from an unexpected quarter —Leon Henderson, former New Dealer, in an address before the Executives' Club of Chicago. *Time* magazine, in one of a series of full-page newspaper ads, points out that "The Federal government takes up to 85.5 per cent of the profits through corporation taxes; then it takes up to 94 per cent of what is left in individual income taxes on the dividends. In many cases the most a successful man can hope to keep for himself out of the

Year	Operating Revenues	Net before Federal Taxes on Income	Federal Taxes on Income	Net Income	Common Dividends
1943	$2,807	$907	$392	$515	$281
1942	2,609	832	333	499	279
1941	2,467	767	230	537	310
1940	2,277	692	135	557	324
1939	2,148	628	89	539	320
1938	2,018	548	63	485	295
1937	2,031	565	56	509	306

earnings of a successful venture is about $2 out of each $100 of profit—with the government taking the other $98. Is that enough? Would you bet $100 at even money to win $2? You certainly wouldn't."

The extent to which U. S. electric utilities would gain by repeal of Federal taxes on income is illustrated by the above table (millions of dollars) which includes prewar years.

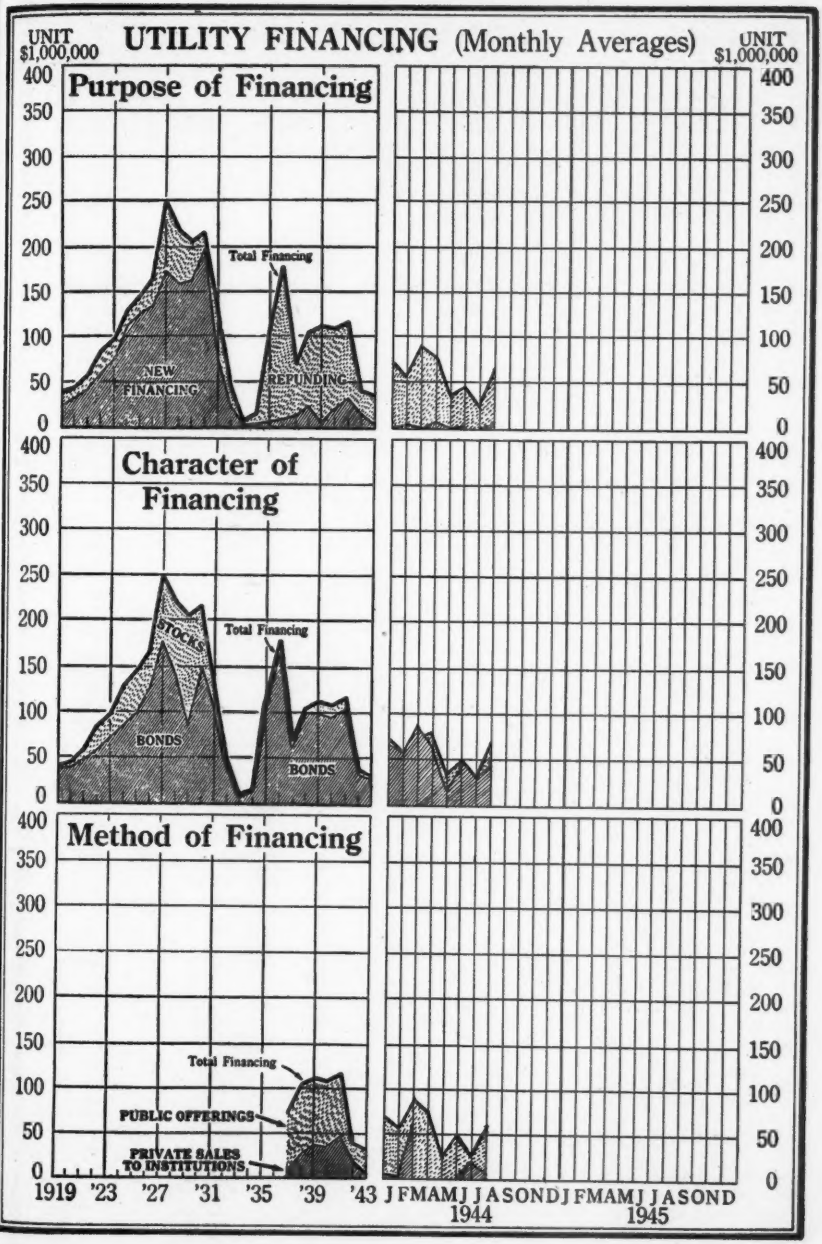
EVEN if the utilities went back to the conditions of 1937-8, cancellation of Federal taxes would permit an increase in common dividends of some 20 per cent —and considerably more if the companies were to avoid the proposed 16 per cent tax on undistributed earnings. In 1937, for example, there was a surplus after all dividends of $77,000,000, and in 1938 $70,000,000. If all available earnings before Federal taxes on income had been paid out in those years, common dividends would have increased over 40 per cent.

Such an increase in dividend payments would, of course, be very bullish for utility common stocks, though the state commissions might soon institute new rate cuts to offset the increased earnings, partially or wholly. However, it is pleasant to speculate on the possibilities of a real recovery in stock prices to "normal" levels, thus paving the way for renewed equity financing. In this connection it is interesting to note that Presidential Candidate Dewey, while he favors continuing the SEC, strongly advocates revising its administration so as to permit a flow of common stock financing.

Holding Company Stocks near Highest 1942-4 Price Levels

A COMPARISON of electric-gas holding company stocks is apt to be somewhat misleading without explanation of individual situations. In the accompanying table (which omits predominately gas systems such as American Light & Traction and Columbia Gas, and Cities Service because largely oil-gas) almost each issue has its individual story, though comparisons can be made by selecting similar issues. It has been necessary to omit several issues such as Electric Power & Light and Standard Gas & Electric where the probable equity of the first preferred stock in the stated share earnings is not yet clearly indicated. American Power & Light preferred should get at least 90 per cent of the stated share earnings, and Commonwealth preferred 85 per cent. In the case of Northern States Power (Delaware) A stock, the present share earnings are meaningless, since in the plan currently before the SEC the stock will receive two shares of the operating company (Northern States Power of Minnesota) on which earnings appear ample to support the current quotation of the Delaware stock.

In the case of Illinois Power Company the share earnings are somewhat misleading, since there are arrears on the preferred stock, and the dividend arrears


UNIT $1,000,000
UTILITY FINANCING (Monthly Averages)
UNIT $1,000,000
Purpose of Financing
Total Financing
NEW FINANCING
REFUNDING
Character of Financing
STOCKS
Total Financing
BONDS
BONDS
Method of Financing
Total Financing
PUBLIC OFFERINGS
PRIVATE SALES TO INSTITUTIONS
400
350
300
250
200
150
100
50
0
1919 '23 '27 '31 '35 '39 '43 J F M A M J J A S O N D J F M A M J J A S O N D
1944
1945

certificates must also be taken care of ($24 each) before the common stock will be entitled to any dividends.

THE relatively high earnings ratio in American Water Works appears due to the recent decline in earnings, and recognition of the fact that this system has been relatively hard hit by Federal taxes—which might be relieved after the war.

Niagara Hudson Power's common stock will, of course, be affected by the proposed system recapitalization, though the plan as submitted to the public service commission will doubtless be revised in some respects.

It is difficult to appraise the UGI statistical picture because of the many changes which have occurred in the past year and the proposed 10-for-1 share exchange. However, the price of the stock doubtless reflects the company's outstanding record of dividend payments since 1887.

In the case of United Light & Power preferred, we have included in the table the new "when issued" United Light & Railways common, five shares of which will be given for Power preferred. The exchange, long pending, has been held up by Otis & Company's appeal to the Supreme Court for a 100 per cent distribution of Railways common in place of the 95 per cent contemplated in the plan.

The company has asked SEC permission to proceed now with the distribution of the 95 per cent, holding the other 5 per cent in escrow pending the Supreme Court decision.

Turning to the yield column, it is obvious that Ogden's dividend was partially on a liquidating basis. The yield on North American has been estimated on the basis of the current price (33) of Pacific Gas and Electric. President Hickey of United Corporation has forecast a possible drop in the Public Service of New Jersey dividend from $1 to 80 cents, in which case the yield would drop to 4.4 per cent.

COMPARISON OF ELECTRIC-GAS HOLDING COMPANY STOCKS

	Where Traded	*Price About*	*Share Earnings 12 mos.*	*Amt.*	*Price-Earns. Ratio*	*Indicated Div. Rate*	*Yield About*	*Approx. Range 1944*	*Range 1943*
Amer. Gas & Elec.	C	30	May	$2.25	13	$1.80	6.0%	31–26	30–19
Amer. Pr. & Lt. $6 pfd. ...	S	52	May	8.32	6	..	..	53–44	48–19
Amer. Water Works	S	10	Mar.	.54	19	..	..	13–6	9–3
Commonwealth & So. pfd. .	S	85	May	7.97	11	2.50	3.0	88–79	82–37
Engineers Pub. Service	S	14	Apr.	1.79	8	..	..	14–9	10–3
Federal Lt. & Trac.	S	17	Apr.	1.74	10	1.50	8.9	18–15	20–7
Illinois Power Co.	C	9	Dec.	2.64	3	..	..	11–4	5–1
Middle West Corp.	C	11	Dec.	1.21	9	.50	4.6	11–10	10–5
Nat. Power & Light	S	7	May	.73	10	..	..	7–6	7–2
Niagara Hudson Power ..	C	3	Mar.	.22	14	..	..	3–2	4–2
North American Co.	S	19	Mar.	1.86	10	*	6.9	19–16	19–10
Nor. St. Power (Del.) A..	C	15	Mar.	D1.03	..	..	..	16–8	8–4
Ogden Corp.	C	4	Dec.	.20	20	.50	12.5	5–4	6–3
Philadelphia Company	C	11	Mar.	1.09	10	.60	5.5	11–9	10–5
Pub. Service of N. J.	S	18	Dec.	1.10	16	1.00	5.6	19–13	18–11
United Gas Impr.	S	1½	June	.08	19	.10**	6.8	2⅜–1½	..
United L. & R. new w.i. common	O	12	Dec.	E1.50	8	..	..	..	..

S—Stock Exchange.
C—Curb.
O—Overcounter.
D—Deficit.
E—Estimated.
* Four-one-hundreths share Pacific Gas and Electric.
** Also one-twentieth share Delaware Power & Light (partial liquidating dividend).

INTERIM EARNINGS REPORTS

	End of Period	12-month Period Last	Prev.	Inc. %	3-month Period Last	Prev.	Inc. %
Electric-gas Holding Companies							
American Gas & Elec. *Consol.*	May	$2.24	$2.10	7%	..	..	..
American Power & Lt. (pfd.) *Consol.*	May	8.32	8.05	4	$1.98	$2.02	D2%
American Water Works *Consol.*	June	.52	.75	D31	..	..	..
Parent Co.	June	.13	.17	D24	..	..	..
Columbia G. & E. *Consol.*	June	.42	.42	..	.11	..	..
Com. & Southern (pfd.) *Consol.*	June	7.96	8.48	D6	..	..	..
Elec. Bond & Share (pfd.) *Parent Co.*	June	4.61	4.24	9	..	..	..
Elec. Pr. & Lt. (1st pfd.) *Consol.*	Dec.	8.23	10.69	D23	.59	3.93	D85
Eng. Pub. Service *Consol.*	June	1.90	1.42	52	..	..	..
Parent Co.	June	.67	.19	253	..	..	..
Federal Lt. & Trac. *Consol.*	Mar.	1.74	1.64	6	.45	.56	D20
Parent Co.	Dec.	1.70	1.43	19	..	..	..
L. I. Lighting (pfd.) *Parent Co.*	June	3.83(c)	4.87(c)	D21	..	..	..
Middle West Corp. *Consol.*	Mar.	.28(d)	.34(d)	D18	..	..	..
Parent Co.	Mar.	.06(d)	.12(d)	D50	..	..	..
Nat. Pr. & Lt. *Consol.*	May	.73	.89	D18	.15	.24	D38
Niagara Hudson P. (pfd.) *Consol.*	June	13.74	15.91	D8	..	..	..
North American Co. *Consol.*	June	1.85	1.72	8	.39	.40	D2
Parent Co.	Mar.	1.30	1.18	10	..	..	..
Nor. States Pr. (Del.) (pfd.) *Consol.*	Mar.	5.95	6.03	D1	1.98	2.10	D6
Ogden Corp. *Parent Co.*	Dec.	.20	.16	25	..	..	..
Public Ser. Corp. of N. J. *Consol.*	June	.63(e)	.55(e)	14	..	..	..
Std. Gas & Elec. (pr. pfd.) *Consol.*	Mar.	12.88	12.43	4	5.75	4.99	15
United Gas Improvement *Parent Co.*	June	.06	.54	D89	..	..	..
United Lt. & Rys. *Consol.*	Dec.	1.49(b)	2.17	D31	..	..	..
Electric-gas Operating Companies							
Boston Edison	June	2.11	2.26	D7	.48	.55	D12
Central Illinois E. & G.	Mar.	1.90	....	..	..	..	..
Commonwealth Edison *Consol.*	June	1.78	1.83	D3	..	..	..
Conn. Lt. & Power	June	2.60	2.62	D1	..	..	..
Cons. Edison N. Y. *Consol.*	June	1.92	1.83	5	.65	.38	71
Parent Co.	June	1.61	1.95	D23	.59	.47	26
Cons. Gas of Balto. *Consol.*	June	4.58	4.10	12	1.12	.87	28
Delaware Power & Light	June	1.07	1.05	2	.27	.23	18
Derby Gas & Electric	Dec.	2.36	2.56	D8	..	..	..
Detroit Edison *Consol.*	June	1.31(a)	1.36	D4	..	..	..
Houston Lighting & Power	June	4.91	5.84	D16	..	..	..
Idaho Power	June	2.14	....	..	..	..	..
Indianapolis P. & L. *Gonsol.*	June	1.97	2.17	D9	.23	.36	D36
Pacific Gas & Elec. *Consol.*	Mar.	2.29	2.25	2	..	..	..
Philadelphia Electric	June	1.35	1.57	D12	..	..	..
Public Service of Indiana	June	1.95	1.94	..	.44	.37	18
San Diego Gas & Elec.	May	.94	.93	1	..	..	..
Southern California Edison *Consol.*	June	1.59	1.46	9	.52	.30	74
Gas Companies							
Amer. Lt. & Trac. *Consol.*	June	1.41	1.54	D8	..	..	..
Brooklyn Union Gas	June	2.34	1.92	22	.71	.63	13
Consolidated Natural Gas	June	3.19	....	..	..	..	..
El Paso Natural Gas *Consol.*	May	3.71	3.72	..	..	..	..
Lone Star Gas *Consol.*	Mar.	.83	.74	12	.77	.71	9
Oklahoma Natural Gas	June	2.41	2.65	D9	..	..	..
Pacific Lighting *Consol.*	June	3.50	3.12	12	..	..	..
Peoples Gas Lt. & Coke *Consol.*	June	4.87	6.46	D25	1.08	1.41	D23
Southern Natural Gas *Consol.*	June	1.77	1.85	D4	..	..	..
United Gas Corp. (1st pfd.) *Consol.*	Mar.	16.99	16.32	4	5.03	4.15	22
Washington Gas Light	June	1.98	2.45	D19	..	..	..

D—Deficit or decrease. (a) No provision made for liability under rate cuts and/or Detroit municipal tax (in litigation), which might reduce earnings substantially. (b) Assuming dissolution plan of United Light & Power is consummated (appealed to Supreme Court). (c) After income appropriations for amortization. (d) Three months ended March 31st. (e) Six months ended June 30th.

What Others Think

Governors Urge Development of Missouri River Basin

GOVERNORS of eight of the nine states in the Missouri river valley have unanimously approved an 8-point program calling for development of the basin under a unified plan for the benefit of all interests. They have expressed themselves as strongly opposed to any "piecemeal legislative program." The resolution outlining the program was adopted at a meeting in Omaha, Nebraska, August 5th and 6th, by the governors of Missouri, Kansas, Nebraska, North Dakota, South Dakota, Montana, Wyoming, and Colorado. The ninth state, Iowa, was not represented.

Seven of the eight states represented adopted a separate resolution: "Nothing done in the interests of flood control or navigation shall adversely affect the use of water for irrigation west of the 97th meridian." The eighth state, Missouri, refused to agree to this suggested plan, on the ground that it was an impairment of the rights of navigation.

The governors of the Missouri basin states, in adopting the resolution, have taken what is considered one of the most important steps in an attempt to unify the divergent views of the various classes of claimants to the waters of the Missouri and its many tributaries.

THE governors sidestepped approval of the O'Mahoney amendment to the House-passed Rivers and Harbors Bill, now before the Senate, and likewise passed over the suggestion from various quarters that a Missouri Valley Authority be set up. However, the unanimous action of the eight governors in calling upon Congress and the President to demand that the Army Engineers and the Bureau of Reclamation present a coördinated plan for joint development as a substitute for independent plans apparently is a step towards satisfying the demands of those who desire a Missouri Valley Authority. Further, the 7-1 vote of the governors in favor of protecting the interests of irrigationists is an obvious move to placate representatives of the arid states in the basin without going to the extreme proposed in the O'Mahoney amendment. The amendment would provide, in addition, that no projects could be developed without approval of the governor or governors in the states affected.

Apparently the irrigation states themselves are willing to compromise if Congress can be persuaded to adopt a policy which will protect their interests as against those of the navigation group, even though the demands of the O'Mahoney amendment are not granted in their entirety. The governors emphasized throughout their deliberations the necessity for unification of the Missouri river program and elimination of conflicting viewpoints to the fullest extent possible, and at the earliest possible date, lest the development program be hampered in the postwar period.

The text of the resolution follows:

> We, the governors of the states of the Missouri river basin — namely, Colorado, Wyoming, Montana, North Dakota, South Dakota, Kansas, Nebraska, and Missouri— and members of the Missouri River States Committee, meeting at Omaha, Nebraska, August 5 and 6, 1944, after hearing and conferring with representatives of various Federal agencies, including the United States Army Engineer Corps, and the United States Bureau of Reclamation, do firmly and emphatically petition the President and the Congress of the United States to give force and effect to the following conclusions:
>
> 1. That, in dealing with matters relating to the waters of the Missouri river basin, it be recognized that we are dealing with one river and one problem.

2. That, in approaching that problem and in order to serve all the people of the basin to the maximum possible degree and to safeguard their present established rights and their future development and prosperity, there can be no piecemeal legislation.

3. That there must be an over-all, comprehensive plan and suitable legislation adopted by the Congress of the United States, which will accomplish that purpose.

4. That the omnibus Flood Control Bill, in so far as it deals with the Missouri river, furnishes the framework for flood control and related purposes.

5. That authorization for the Bureau of Reclamation plan now before Congress and embodied in Senate Document 191, Seventy-eighth Congress, second session, is necessary to a comprehensive development of the Missouri river basin.

6. That those provisions of the Rivers and Harbors omnibus bill which relates to navigation on the Missouri river below Sioux City, Iowa, vitally affect the economic life and plans for the future development of the entire Missouri river basin.

7. That to develop the basin fully for the greatest benefit of its citizens, both present and future, and for the greatest benefit of the United States of America, the Congress of the United States should recognize, now, the problem in its entirety as it affects the people of the Missouri basin and their economic destiny, and that of the United States of America.

8. That, in order to accommplish this unity of purpose and action, we ask the President and the Congress of the United States, to authorize and direct the United States Army Engineers and the United States Bureau of Reclamation to bring before the Congress a coördinated plan based on the proposed legislation and official documents heretofore mentioned (Senate Document 191 and House Document 475), which will make possible the authorization by the Congress, now, of the Missouri river basin development program in its entirety, by such amendments to legislation now pending as are feasible from the standpoint of legislative procedure.

THE Pick plan of the Army Engineers for flood control is embodied as one of the many provisions of the omnibus Flood Control Bill passed by the House and now on the Senate calendar. In the Rivers and Harbors Bill, also passed by the House and now on the Senate calendar, is the provision for a 9-foot navigation channel on the Missouri from Sioux City, Iowa, to its mouth—also approved by the governors.

The Pick plan, on which extensive hearings were held by both House and Senate committees, proposes dams, reservoirs, and other works, estimated to cost about $650,000,000. The Reclamation Bureau plan proposes projects that would cost $1,250,000,000—mainly reservoirs to store water for irrigation and flood control. Both plans include extensive hydroelectric plants.

In view of the legislative position of the two pending bills, the governors were unable to suggest how it would be possible to incorporate the reconcilable features of the Reclamation Bureau plan along with the Pick plan in the Flood Control Bill.

It was the view of the governors that their action here enabled them to go to Congress with a united front in favor of a comprehensive, unified plan for the entire basin, and that it was up to Congress to find a way to shape the pending legislation to that plan.

In connection with the discarded proposal of Governor John Moses of North Dakota, for a Missouri Valley Authority in the form of a 5-member commission, attention was called to the fact that a provision of the pending Flood Control Bill set up a river commission, duplicating the Mississippi River Commission, entirely under the jurisdiction of the War Department. There was virtually no support except from Governor Moses for a valley authority as a substitute for the proposed War Department commission.

THE *St. Louis Post-Dispatch*, staunch supporter of a Missouri Valley Authority, commenting editorially on August 7th, accused the governors of failing "to implement their high-sounding resolutions with the kind of administrative machinery that will make them work." Continuing, the *Post-Dispatch* said:

> . . . They proposed no basic change in the system by which authority over the river is divided among various governmental agencies, which have failed lamentably in the past to solve the river's problems. There is no sound basis for hoping that they will succeed in the future.

The Omaha meeting endorsed the Pick plan, embodied in the Flood Control Bill; it urged the desirability of the 9-foot channel to Sioux City, embodied in the Rivers and Harbors Bill; it also found necessary the plan of the Bureau of Reclamation. It then requested that the President and Congress authorize and direct the Army Engineers and the Bureau of Reclamation to formulate a coördinated plan based on various proposed legislation.

This is to ask that the present system be retained, with all its inherent basis of conflict. In the past, the Army Engineers have carefully guarded their prerogatives; so has the Bureau of Reclamation.

The governors piously hope that, in the future, the rivalries between the bureaus will be ended and that the lion and the lamb shall lie down together. They fail to come out for a unified authority which would make their resolutions not only high-sounding but practical. They propose a continuation of divided river control, which has caused so much conflict in the past.

The editorial added that the conflict is caused "partly by the pulling and hauling of special private interests, both up river and down, who selfishly seek undue advantages." It added that another cause of the conflict was divided governmental authority over the rivers, pointing out that the Army Engineers are primarily interested in navigation and flood control and the Bureau of Reclamation in irrigation, and "only optimists think the twain will ever meet." Dragging in the Federal Power Commission and the Department of Agriculture as other agencies also concerned with the river, the editorial continued: "These bureaucracies jealously guard their prerogatives; meanwhile the dry states are athirst and hardly a spring goes by that the lower states aren't flooded."

The *Post-Dispatch* then extolled the virtues of the Tennessee Valley Authority and its unified, autonomous function of controlling Tennessee river's problems as a whole, and suggested a similar authority for the Missouri river.

—C. A. E.

Multipurpose Dam" Phrase Called Fraud

THE public power trust, spearheaded by the Department of Interior, has in the last twelve years misused the phrase "multipurpose dam" to hitch itself to flood control and navigation for a "free ride legally to the shady enemy of free enterprise—political seizure and operation of the privately owned electric industry."

This was the charge made by Frank M. Wilkes, president of the Southwestern Gas & Electric Company, Shreveport, Louisiana, in hearings this summer on the Flood Control Bill before the Senate subcommittee of the Committee on Commerce. Mr. Wilkes, engineer of twenty-five years' operating experience, declared that for all practical purposes there is no such thing as a multipurpose dam. A dam, he said, is built for a specific purpose. It either must be empty to provide space for heavy rains to prevent floods, or it must be full to provide water for irrigation or for power.

He admitted that a flood-control dam, within limits, could be constructed so as to provide incidental power, which he insisted should be sold to private utilities to relieve the cost of steam generation, only when the incidental power is available. Continuing, he said:

It is quite evident that in the interest of producing the maximum number of kilowatt hours from a power dam, its operator will naturally hold the water in the lake at the maximum elevation which the dam can hold. It is also equally a natural thing in the event of a flood for him to delay as long as possible the release of water through the relief section instead of through his turbines, as he does not know whether the rains of today will continue tomorrow or whether the rain that is falling today may be the last precipitation to occur for many months. This is especially true of the southwest area, where we have about six months when we can expect heavy rains from time to time; about three months of doubtful rainfall; and about three months when normally there is little or no rainfall. If an operator of such a dam guesses wrong, and he wastes water, he has wasted kilowatt hours that he could have sold later on in the season.

If he guesses wrong, and the rains con-

Washington (D.C.) Daily News

WHEN THE LIGHTS GO ON AGAIN ALL OVER THE WORLD

tinue, and a flood comes down a river, he will inevitably increase the amount of flood by adding to the flood the volume of the lake, or a portion of such a volume above the spillway.

MR. WILKES emphasized that the private power industry is looking only to the Senate and the House of Representatives for protection against "complete annihilation." He said the public power trust, which began in the Tennessee valley where now there are no private utilities operating, has gradually divided the United States into areas with the intention of taking over the private utility companies of the country. He urged that

in the development of dams for flood control with incidental power development, it is necessary to provide by law that such dams never fall into the hands of either the private utility company to which the incidental power is sold or into the hands of public power agencies for modification to convert such a dam from its flood-control purposes with incidental power, to a power dam with incidental flood control. He said in the case of the Grand river dam at Pensacola, Oklahoma, the original design as a flood-control dam had been changed to the point that it became a power dam and as a result lost its flood-control usefulness.

In an attempt to prove that public power advocates had deliberately tied themselves to flood control and navigation to attain socialization of the electric power industry, Mr. Wilkes quoted former Senator Norris, father of the TVA Act, as follows:

> Mr. President, the question which will be involved in connection with the consideration of this bill is not a question of navigation, although that is the constitutional peg on which the proposed bill hangs. It is not a question of flood control, although that is a question which under the Constitution we are privileged to deal with.

He said that statement was made June 8, 1937, seven years ago, and added that it remained the philosophy of a large segment of "bureaucratic thinking." He continued:

> Now you gentlemen may not care one way or another whether the private utility industry survives or is swallowed up by the boa constrictor of the public power trust. But you do care about flood control or you would not be spending these hot days working on a flood-control bill. You do care about navigation or you would not be on the Senate Commerce Committee. I leave it to you: Must honest flood control, honest navigation improvement, be placed at the mercy of dishonest public power? I say dishonest public power, for we have here the open confession that these social objectives were arrived at by riding the honest and open objectives of flood control and navigation.
>
> Entirely aside from the legal aspects of the attempt to establish a consanguinity by miscegenation between these two purposes with the power purpose, there is also the political factor. For every man on the street who favors socialization of this industry there are a hundred who are for flood control and navigation improvement. Public power has sought self-identification with these popular symbols because of their political strength.

He concluded that the phrase multi-purpose dam "as it has been sold to the American people," is a shrewd fraud. He said that they asked for flood control and were given electric power, the subsidies for which they themselves paid.

REA Employee Hits Senate Probe

J. K. O'Shaughnessy, assistant chief of the design and construction division of the Rural Electrification Administration, has urged that the Senate subcommittee which investigated REA withdraw its interim report and hold further hearings "under the direction of an unbiased and impartial counsel and that all parties directly concerned be given an equal opportunity to present facts."

O'Shaughnessy was one of the principal targets of witnesses before the Senate subcommittee who charged irregularity in the awarding of contracts for construction of REA projects which favored copper conductor as against other types of conductor. O'Shaughnessy was never called as a witness, although the record shows that Committee Counsel Carroll L. Beedy said that he would be called. Instead, the committee offered him an opportunity to defend himself in a written statement.

He complied with a statement running 117 pages, in which he asked for an opportunity to appear personally before the committee and denounced some of the witnesses, including James K. Smith, who conducted an investigation of REA for the Department of Agriculture, Ward B. Freeman, Henry Richter, Lucian A. Thomas, Donald B. Mackay, and Administrator Harry Slattery, variously, as dishonest, incompetent, or unfair. His

statement includes reviews of a number of projects on which the witnesses charged copper was used at an increased cost to the co-ops, and purports to show that in fact in a majority of instances the cost was less than it would have been by the use of other types of conductor.

O'SHAUGNESSY suggested that if the committee decides upon further investigation, and the facts still show "illegitimate or unethical practices by REA employees, proper criminal charges be made against the guilty parties, and if the testimony of previous witnesses be proved to be false, such witnesses be cited for perjury."

O'Shaughnessy charged that the witnesses, including Counsel Beedy, were interested only in proving a point and they "deliberately concealed or grossly distorted facts." He called attention to what he called a fact not recorded in the record — that with minor exceptions "every case involved in the conductor controversy occurred while REA was an independent agency under the direction of John M. Carmody."

He further called attention to the fact that the preselection policy of choosing conductor was established by Carmody and that there have been no cases of controversy regarding types of conductor since that policy was set up. O'Shaughnessy attacked the conclusion of the committee that "there was more than a legitimate or ethical connection between some of the engineers and other personnel employed by the REA in relation to the selection of conductor and other construction material."

O'Shaughnessy included in his statement copies of letters showing he attempted to obtain from Slattery either an admission that his testimony was wrong or a promise that Slattery would file charges against O'Shaughnessy. The statement purports to show that Slattery sidestepped the issue.

—C. A. E.

The Future of the REA

ALREADY serving nearly half the electrified farms in the nation, the REA coöperative network may emerge in time as one of the largest electric power combines in the United States, and as a central agent for the transformation of rural areas. This is the view of Frederick William Muller, Columbia University economist, expressed in a study entitled "Public Rural Electrification," published by the American Council of Public Affairs.

The study has been in preparation since 1942. It is based upon information obtained in the course of field work as well as upon research in connection with the records of the REA.

Primarily concerned with policy making and administrative aspects, the report presents a detailed analysis of the basic operations of the Rural Electrification Administration and its relationships with rural electric coöperatives.

In Dr. Muller's opinion, the rural electrification program has been successfully operated on the whole. However, he points out that there have been a number of serious failings in certain administrative respects. He expresses these general conclusions:

(1) The program has benefited the country as a whole because it has raised rural economic standards.

(2) It may well be expanded to cover all rural areas in postwar years.

(3) Its political support is so strong that it is highly unlikely that governmental aid will be withdrawn.

(4) Rural electric coöperatives will probably enter other fields.

These conclusions are discussed in considerable detail under the heading "Possible Future Developments."

PUBLIC RURAL ELECTRIFICATION. By Frederick William Muller. American Council on Public Affairs, 2153 Florida Ave., Washington, D. C. 1944. 183 pp. Cloth, $3; paper, $2.50.

The March of Events

Merger Approved

THE Federal Power Commission early this month approved the merger of Empire District Electric Company electric facilities with those of the Lawrence County Water, Light & Cold Storage Company, Benton County Utilities Corporation, and Ozark Utilities Company, leaving Empire as the surviving corporation. All the companies involved in the proposed transaction are subsidiaries of Cities Service Power & Light Company. The facilities of the four companies, which serve contiguous and, to some extent, overlapping areas, will be operated as a single integrated electric system in southwestern Missouri, northwestern Arkansas, southeastern Kansas, and northeastern Oklahoma.

In connection with the proposed merger, accounting adjustments will be made by Empire which will include elimination of $7,093,380 in write-ups and other amounts in excess of original cost in the plant accounts of all four companies. These adjustments include amounts which were the subject of the commission's order of October 29, 1942, directing Benton County Utilities Corporation to make certain accounting adjustments and its order of June 13, 1944, approving proposals by Empire to eliminate write-ups and other inflationary items from its plant accounts.

Hydro License Issued

THE Federal Power Commission has authorized issuance of a Federal license for a period terminating in 1970 to the Connecticut River Power Company (New Hampshire) and New England Power Company (Massachusetts) as joint licensees, for the 41,560-horsepower Vernon hydroelectric project (Project No. 1904), located on the Connecticut river between Hinsdale, New Hampshire, and Vernon, Vermont. A joint application for the license was filed on March 2, 1943, by the two companies, both subsidiaries of the New England Power Association.

The commission's order stated that "Congress has authorized construction by the War Department of a number of reservoirs in the Connecticut river basin which, it is anticipated, will increase the low month flow from about 2,500 cubic feet per second to a minimum of 5,900 cubic feet per second; and studies indicate that with certain improvements to the project and with a better regulated stream flow, the installed capacity should be increased from the present 24,400 kilowatts to possibly as high as 60,000 kilowatts."

Issuance of the license was subject to the condition that at such time as the commission shall direct, Connecticut River Power "shall alter and enlarge the Vernon project in accordance with such plans as may be found by the commission to be best adapted for the use and benefit of interstate commerce, for the improvement and utilization of water-power development, and for other beneficial public uses. . ."

The order stated that, beginning January 1, 1938, annual charges for the project are to be based on a capacity charge of 1 cent per horsepower on the authorized capacity (41,560 horsepower) plus 2½ cents per thousand kilowatt hours of gross energy generated by the project.

Charges Rails Plan Full Monopoly

DISCRIMINATION by railroads against industry and agriculture of the South and West was charged recently by Wendell Berge, assistant U. S. Attorney General, who said in an address in Kansas City that the ultimate goal of the roads was complete domination of transportation. Specifically, Mr. Berge said the railroads had fixed "discriminatory freight rates by private conspiracies and not by public authority."

Speaking before the Kansas City Advertising and Sales Executives Club, Mr. Berge declared the railroads had made public announcement that they were "not concerned whether their revenue came from rails, bus lines, water, or air transport."

"The railroads have now come forward," Mr. Berge continued, "with a plan in the name of free enterprise which contemplates development of regional, integrated transportation systems which would control and operate rail, motor, water, and air transport. . . . The purpose of this scheme is to bring all forms of public transportation under domination of the railroads. . . . It requires no extended analysis to understand the 'integrated transportation systems' they propose would possess the power of life and death over every community and every industry. Their rate policies would determine the location of industry, the sources

from which raw materials would be drawn, the markets to which products would move, and the employment opportunities for a large proportion of the workers in industry, trade, agriculture, and mining."

Montreal Strike Ends

THE Montreal Tramways Company, inoperative for eleven days this month because of a strike of 4,000 employees seeking to enforce union shop demands, resumed tram and bus service on August 14th under direction of two government controllers.

In an unprecedented move, the government approved an order under the War Measures Act, taking over direction of the company and ordering the striking members of the Canadian Brotherhood of Railway Employees to return to work "or face the consequences."

Labor Minister Humphrey Mitchell said that "the issue is not of sufficient importance to warrant a strike in wartime." He ordered the strikers to return to work "under the terms and conditions prevailing at the time the strike occurred."

The government was to direct the transportation system for sixty days, unless an agreement should be reached between the company and the union during that period. Company officials said they would coöperate fully with the government.

Order U-7 Amended

THE War Production Board early this month declared that restrictions on the delivery of natural gas in the large consuming war production centers in the eastern United States will not be relaxed until the supply situation "materially improves." Amendments, however, were made in Order U-7 to lift restrictions where the gas supply has become adequate.

These will permit the delivery of gas to new war housing construction after June 1, 1944, and to homes where heating equipment is worn beyond repair.

Arizona

Power Projects Planned

GOVERNOR Sidney P. Osborn and Commissioner H. W. Bashore of the U. S. Bureau of Reclamation recently signed a contract making the state and the bureau partners in a preliminary survey of an estimated $640,000,000 reclamation and power development undertaking, which would provide for the diversion of 2,000,000 acre-feet of Colorado river water into central Arizona, with an attendant power development estimated at 12,000,000,000 kilowatt hours annually.

In accordance with the terms of the contract (which provides that Arizona be represented on all reclamation studies by an engineer of its selection), R. Gail Baker was chosen as the state's project engineer. Mr. Baker was formerly assistant chief engineer and superintendent of the Salt River Valley Water Users' Association and city engineer of Phoenix.

A U. S. Senate subcommittee on irrigation and reclamation assembled data on three developments thought to be the most feasible for carrying out the undertaking—Marble gorge, Bridge canyon, and Lake Havasu.

California

Civil Service Suspended

AN emergency proclamation setting aside the civil service provisions of the charter and enabling the city of San Francisco to employ all of the Market Street Railway operating, repair, and maintenance personnel for the duration of the war was issued on August 8th by Mayor Lapham. The proclamation was issued under § 25 of the charter, which directs the mayor to act on his own initiative whenever a public emergency threatens "the lives, property, or welfare of the citizens, or the property of the city and county."

In this case it was issued to prevent mass resignations of some 800 vitally needed platform men from the Market Street Railway prior to the taking over of that line by the city on September 29th. The resignations started, Lapham explained, when the civil service commission announced that the men could not satisfy civil service charter provisions and hence were not eligible even as limited tenure employees.

The effect of the proclamation, providing it stands up in court—should its legality be tested, will be to allow the limited tenure employment of noncitizens, platform men over seventy years, the compulsory retirement age for city employees, and others who failed to meet legal requirements. Further, it protects the seniority of Market Street Railway employees in matters of compensation and preference of runs, placing them on equal footing with municipal men at least for the period of the emergency.

The pay differential was ironed out by the

mayor's proclamation, which provided that the Market Street men will be paid the top municipal scale, providing they have more than eighteen months' seniority. Raises are granted by both lines every six months for the first eighteen months.

President Harry K. Wolff of the civil service commission declared that the commission would go along "with the broad principles expressed in the mayor's proclamation." An appeal was taken to the War Labor Board in an effort to have the Market Street scale raised to that of the municipal line.

Power Trade Studied

A PROPOSAL suggested by the Pacific Gas and Electric Company under which San Francisco would enter into a virtual power-trading agreement with the PG&E for the disposal of Hetch Hetchy power was recently being studied by Mayor Lapham and the utilities commission, according to reports. Utilities Manager E. G. Cahill said the proposal is in line with suggestions offered by Abe Fortas, under secretary of the Department of Interior, to the effect that the city use Hetch Hetchy power for municipal purposes, such as operation of the consolidated streetcar system and other civic establishments.

Provisions of the plan are said to be as follows:

All the Hetch Hetchy power would be delivered to PG&E at Newark (end of the city's transmission lines). The private company in turn would distribute all power necessary for municipal uses and provide step-down stations and stand-by service. The company would be paid for its services and for the use of its facilities in power, not in cash. The city would then bill itself at retail rates for all power needed for municipal uses. Thus, instead of paying the PG&E for power the city would be buying its own power, although that power would be distributed by the private company. In this way, the Raker Act will not be violated.

District of Columbia

Rate Cut Review Sought

THE Potomac Electric Power Company on August 11th asked the public utilities commission to reconsider its order of July 22nd directing a rate reduction of $1,037,189 and declared that unless the terms of the order were modified, the company could not continue under the sliding-scale arrangement in effect since 1924.

"The provisions of the order of the commission are such as to constitute an abandonment of many important and fundamental principles of the sliding-scale plan," Alfred G. Neal, PEPCO president, declared. He continued:

"During the last three years, this company contends it has not earned the fair return upon its property, and as we forecast results for 1944 under the existing rates of charge, we will not earn a fair return this year. The manner in which the commission now proposes to modify the existing sliding-scale plan of operation is such that we simply cannot continue longer to accept changes so detrimental to the welfare of the company."

In the largest reduction of rates since the inauguration of the sliding scale, the commission reduced the rate of return from 6 per cent to 5.5 per cent; changed the present undepreciated rate base of approximately $105,000,000 to a depreciated rate base of $80,771,719; eliminated $5,581,000 representing the amount in the rate base in excess of the original cost of property; and eliminated cash working capital amounting to more than $1,000,000 in the rate base.

Mr. Neal pointed out that under the sliding scale, rates had been reduced every year except in 1942, with the cumulative savings to the ratepayers of the District and near-by Maryland amounting to more than $86,000,000. It was recalled that at the outset of the rate hearings in February, Mr. Neal warned that if any substantial modifications were made in the sliding-scale agreement he would advise the directors to withdraw from the arrangement.

Illinois

Favors Transit Purchase

THE Chicago City Council unanimously approved, on August 15th, a $100,000,000 proposal for municipal purchase of the local surface and elevated lines. The long-range plan is designed to end the city's long-standing traction problem.

The council authorized the corporation counsel to inform Federal Judge Michael L. Igoe, who holds control through 17-year-old receivership proceedings, of the city's readiness to adopt a municipal ownership traction ordinance.

The plan, proposing direct purchase through a court foreclosure sale, would require a public referendum. Experts figured April 30, 1945, would be the earliest date for consummation of the transaction.

Under the plan $85,500,000 would be dis-

tributed among security holders of the Chicago surface lines and $14,500,000 among those of the Chicago Rapid Transit (elevated) Company.

Kentucky

LG&E Purchase Advised

ROY WENZLICK, St. Louis and New York real estate analyst and economist who had just completed a survey and report of conditions affecting Louisville's economic future, advised Mayor Wilson Wyatt recently that "it would be wise for the city of Louisville to purchase and operate the Louisville Gas & Electric Company," listing the reasons for his statement.

Mr. Wenzlick's opinion was given in response to a letter on the subject by Mayor Wyatt. He declared the "time is unusually propitious for such a purchase," pointing out that practically all the company stock is in one ownership; that long-term interest rates at the present time are "probably at a long-time low"; that the city would put itself in a bad competitive position with other cities by adding to the real estate tax burden for increasing city revenues; and that a low electric power rate would enhance Louisville's chances for attracting industry. He said the "high Federal taxes on the earnings of the company at the present time will not continue indefinitely into the postwar period at their present level. After excess profits taxes are reduced, the earnings of the company available in dividends would increase. This would increase the value of the stock and make the purchase of the company more expensive."

OPA Claim Denied

THE state public service commission recently denied an Office of Price Administration intimation that revision of the "coal clause" in wholesale power contracts would result in increased charges to municipal customers of Kentucky Utilities Company. Under the revision such customers will save $128,000 a year, a spokesman for the commission declared.

The revised Kentucky Utilities "coal clause," which provides that the purchaser shall be billed accordingly when the price of coal used in the manufacture of power rises or falls, went into effect July 1st. According to commission figures, coal mine customers in the wholesale bracket will save $74,000 a year, rural coöperatives will save $15,600, Frankfort (based on the difference between old and new clauses) will save $12,000, other municipalities will save $3,200, other utilities will save $2,600, and special interchange customers will save $20,000.

Commenting on a directive to Kentucky Utilities from Robert A. Nixon, OPA director of transportation and utilities, advising that any increase in rates would have to be handled through the commission under OPA intervention, the commission spokesman said Nixon apparently misunderstood the "coal clause" revision or confused it with another issue—probably a protest from Frankfort against a new contract resulting in a $1,500-a-month increase to the Frankfort municipal system. Frankfort had been buying from Kentucky Utilities under a special contract "inherited" when the city assumed ownership of the local utility and thereby benefiting from complete exclusion of the "coal clause." The city must now accept a standard contract and be billed on a scale with other wholesale customers.

Maryland

Sue to Cut City Light Bill

INJUNCTION proceedings have been filed by three Baltimore taxpayers asking the court to restrain the city from paying more than 3 cents a kilowatt hour or from entering into an agreement to pay more than that amount for street lighting. The city is paying an excess of $600,000 a year for street lighting to the Consolidated Gas, Electric Light & Power Company, or about 250 per cent more than other cities of similar size, it was alleged.

The taxpayers further contended that these excessive payments have continued for a period of about seventeen years, with a loss to the city of nearly $9,000,000. They claimed that the overcharges "should have been known to city officials, if they had known their business and were interested in protecting the city's and taxpayers' interest."

The court was asked to require that all sums in excess of 3 cents a kilowatt hour be kept separately in a depository until the court or the public service commission determines what rate shall be paid.

Michigan

Rate Cut Ordered

THE Detroit Edison Company on August 4th was ordered by the state public service commission to cut its gross revenue $10,450,000 for this year, ending a long fight in which the city of Detroit acted to obtain for Edison customers the money the company would ordinarily pay to the Federal government in excess profits taxes. Unless the adjustments are made before December 31st, ratepayers would not benefit and the excess profits would go into taxes. The cut in revenue, in the form of rebates to the customers, does not exhaust all of the company's 1944 liability for Federal excess profits taxes, which amount to approximately $13,112,250. To this extent the commission follows out, in a small way, its earlier announced interpretation of the state supreme court's decision to the effect that the utility's rates need not be cut by the exact amount of the excess profits tax liability.

The reduction, which applies to commercial and domestic users of electricity, is "to continue until further order."

The commission also ordered all other major utilities in Michigan to file reports on finances by September 15th, and said efforts would be made to "make adjustments" on a voluntary basis.

Informed of the commission's decision, Prentiss M. Brown, chairman of the board of Detroit Edison, said:

"The temporary earnings of corporations due to war activity have long been a temptation to our local taxing authorities. Two attempts have been made by the city to capture these so-called excess profits taxes from the Detroit Edison Company. One is by a rate reduction, the other by a tax known as an excise tax, designed to take these profits (85½ per cent of which goes to the Federal government). Heretofore the Michigan Public Service Commission allowed these taxes as an expense of doing business.

"Neither the ratepayers nor the city can get this Federal money without taking from Edison a part of the funds we desire to retain to carry us over the postwar period of adjustment. As it now stands by reason of the commission's decision, the city and the ratepayers both take the money, some $10,000,000 each, unless the city tax is declared invalid. The commission must have assumed the tax was invalid. We do not know what the courts will do with it."

"This is an intolerable situation, and Detroit Edison will use every means to prevent this injury to its property and consequent damage to its service to customers," he continued.

Ypsilanti Strike Ended

THE eighty striking municipal employees at Ypsilanti voted on August 4th to return to work immediately after Army and War Labor Board officials pleaded that their 2-day strike would force the closing of four war plants in the area.

The strike most seriously affected gas service to the war plants. Partial water service was maintained through the strike, but other city departments were idle.

Employees of the gas, water, sewer, sewage disposal, street and park departments demanded 10 per cent pay increases and reinstatement of an employee who had been discharged a short time before as an economy measure, city officials said. The return to work was made pending a meeting with the city mayor and city council.

Missouri

Operating Expense Deduction Protested

REPRESENTATIVES of Missouri water, gas, and electric companies appeared before the public service commission in Jefferson City on August 11th to protest against a recent order directing utilities to deduct from their net operating expenses the income they receive on the reserve depreciation accounts. Protests from telephone and telegraph companies were to be heard later.

The order provided that, unless the utilities can show otherwise before October 1st, they shall reduce their net operating expenses by 5½ per cent annually of the amount of their depreciation reserve funds, beginning next year.

Among the companies affected by the order are:

The Union Electric Company with a depreciation reserve fund of $26,184,000 on properties in Missouri; Southwestern Bell Telephone Company, with a fund of $30,000,000; St. Louis County Gas Company, $2,144,000; St. Louis County Water Company, $2,040,000; and Laclede Gas Light Company, $1,203,000.

MVA Urged by Union

THE first organized support for a Missouri Valley Authority to carry out a comprehensive, unified plan for control and development of water resources of the Missouri river system came recently from a local union of the United Electrical, Radio and Machine

Workers of America (CIO), of which William Sentner is general vice president.

The union, with headquarters in St. Louis, recently issued a pamphlet under the title "One River, One Plan," setting forth the following points as its program: (1) to petition the Senators and Congressmen of the valley to back a Missouri Valley Authority bill; (2) to familiarize labor, farmers, industry, and all the people with the facts of the need for an MVA; (3) to effectively plan a program to give jobs to demobilized service men, war workers, and farmers; (4) to coöperate with state governments, farm, labor, merchant, and industrial organizations, and interested government agencies, all with a view to passage of a bill by Congress to establish a Missouri Valley Authority.

The union stated that it "believes that floods cannot be controlled without soil conservation; that irrigation is not much good without hydroelectric power; that navigation without irrigation and flood control would spell disaster." An over-all plan for the Missouri valley, it stated, should give proper consideration to flood control, irrigation, navigation, soil conservation, power, and other beneficial uses of water.

Nebraska

Estimate of Properties Asked

BEATRICE city commissioners have directed private engineers to prepare an estimate of Consumers Public Power District properties in the city preparatory to negotiations with the district for unification of the properties in a municipal power system. The action followed the commissioners' formal request of Consumers that a price be set on the Beatrice properties by August 25th. In filing the price request, Mayor Bert A. Manning announced that the city "is prepared to condemn Consumers' properties if a suitable price is not fixed or negotiations are delayed."

In case of condemnation, Manning said a special election would be called, probably in November, to "show the determination of the people to unify the power systems under a single, municipal control." Municipal power is believed by the commissioners to promise a source of revenue for four purposes: (1) retirement of bonded debt on projected municipal power system; (2) reduction of regular tax levy on city property; (3) planning and effectuating a sound public improvements program, including municipal activities of public welfare nature; (4) reduction of power rates.

Dismissal Sought

ATTORNEYS for the Peoples Power Commission of Omaha, created for the purpose of purchasing the properties of the Nebraska Power Company, filed a brief in the state supreme court recently in which they asked a dismissal of the action to test the right of the members of the commission to hold office, brought on the ground that LB 204 (creating the commission) was unconstitutional and that it was equally incumbent upon the council to hold an election as to the desirability of making the purchase.

They said that the title to a public office could not be tried in a mandamus action and that the petitioners had an adequate remedy at law in *quo warranto*. The attorneys alleged that the city council was the agency of the state of Nebraska and the term "governing body," as used in LB 204 to designate the body which could determine the facts upon which the law intended its own action to depend, did not include the electorate of the city of Omaha. They raised the same point as did the city in its appeal that the resolution of the council was not legislative and therefore not subject to referendum. There are four separate appeals with reference to this case which are pending in the supreme court at this writing.

Consumers' Purchase Hearings

IF the proposed purchase by the city of Lincoln of the local distribution system of Consumers Public Power District is ready for submission to vote of the people at the November election, a companion piece proposing a utilities board for the city may be presented at the same time, according to recent reports.

Mayor Marti, at the first meeting of the committee of 59 (named to assist and advise in the proposed purchase), suggested that the board idea be given some thought.

In response to a request for an opinion as to whether or not the city council can, under its charter, set up a utilities board, City Attorney Max Kier advised that it could appoint such a board but that the latter cannot be vested with power to contract or to fix rates. It could be advisory only, unless the charter were amended.

At the last in the series of informational meetings relative to the city-Consumers' squabble before the committee of 59 went into executive session to determine what advice to give the city council relative to purchase procedure, Consumers Engineer Robert W. Beck claimed that if Lincoln takes over the local Consumers distribution system, as outlined by Mayor Marti and others, the city will not save a penny—"in fact, it will probably cost the taxpayers." Presenting a *pro forma* estimate of operating costs under unification, Beck found a $76,009.50 saving, no matter who bought out whom. He subtracted $21,456.45 annual sever-

ance charge from the expenses under district management, coming through with an estimated annual operating savings of $54,553.05 under Consumers management of the combined systems. Under city management, Beck pointed out, such items as functional and physical severance charges and additional power costs will amount to $147,175.84, raising costs under city management so that the annual operating loss will be $71,166.34. It was admitted, under questioning, however, that the funds to be accrued by the city through savings on interest and other items were not counted against the outlined deficit.

R. L. Schacht, Lincoln, compared operating costs for the two systems in Lincoln—to the advantage of Consumers. Engineer Beck's testimony intimated that the power district might reclaim the steam plants it now leases to the state's hydroelecric projects in the event the city of Lincoln, having bought the district's distribution system in the city, should attempt to buy wholesale power direct from the hydros instead of through Consumers as a middleman. He stated: "If Consumers were to take back the steam plants it has leased to the hydros it would be ruinous for the Nebraska Power system and for irrigation in the state. Consumers and the hydros are inseparable."

Consumers' engineers reiterated the previously set sum of $7,195,155 plus $400,000 severance charge as the minimum price for purchase of the local electric distribution system by the city.

New York

Electric Rates Reduced

A FURTHER revision in electric service rates charged by the New York State Electric & Gas Corporation in five of its districts was announced recently by the state public service commission.

The commission said the reductions, effective August 1st, were expected to save general and primary consumers a total of $79,000 annually, divided by districts: Binghamton, $26,500; Oneonta, $12,000; Corning-Hornell-Perry, $13,100; Emira, $24,000; and Utica, $3,300.

Two months ago the company reduced its residential rates by more than $224,000 annually, the commission said.

The PSC also announced authorization for the company to serve the village of Canisteo, Steuben county, with electricity.

Brooklyn Gas Offers New Plan

IN conformity with a recent decision of the state public service commission, Brooklyn Union Gas Company early this month filed an amended petition with the commission for refunding its $48,000,000 funded debt through securities to be disposed of at competitive bidding.

Issuance of $30,000,000 of general mortgage, 25-year sinking-fund bonds and $12,000,000 of 25-year sinking-fund debentures is proposed, with $6,000,000 to be paid from the company's treasury. Both types of securities are to be disposed of at competitive bidding and payment to the company is expected on October 1st or October 15th.

Attached to the petition was a contract between the gas company and Halsey, Stuart & Co., Inc., under which the latter agreed to make a first bid of at least the principal amount of the securities with the rate of interest on the bonds fixed at 3½ per cent and at 4 per cent for the debentures.

The previous denial was based on conclusions of Chairman Milo R. Maltbie that better terms were available to the utility than those originally proposed for sale of the mortgage bonds to a group of institutions at 101 with interest at 3¾ per cent.

The commission decision at the same time authorized sale of the $12,000,000 of debentures to Halsey, Stuart in accordance with an agreement between the company and the investment firm that the debentures be offered for bidding and, if a better bid were made, Halsey, Stuart agreed to return the securities to the Brooklyn Company. This contract was terminated by the new agreement, which covered both securities. Adoption of the new plan was dependent upon approval by the Securities and Exchange Commission.

Ohio

Wins Excess Profit Trial

WITHOUT passing on the constitutionality of the Renegotiation Act, a 3-judge district court tribunal on August 2nd gave a memorandum opinion expressing the view that the Lincoln Electric Company of Cleveland has the right to a trial on merits in a case in which the firm seeks an injunction to prevent the government from forcing it to turn over alleged excess profits. The court set September 27th as the date for the trial on merits.

The statutory tribunal, consisting of Chief Justice D. Lawrence Groner of the District of Columbia Court of Appeals and Justices Jennings Bailey and T. Alan Goldsborough of

district court, denied a government motion for a summary judgment against the firm. If granted, the judgment would have had the effect of dismissing the firm's suit for an injunction.

"The rule for a summary judgment was, in our opinion, never intended to throw upon the court the burden of determining a case involving, on the one hand, a delicate question of law, and on the other hand, complicated and controversial facts, without an adequate and proper hearing," the court said. The firm should be given an opportunity of proving its case and the constitutionality of the act "should be briefed and argued."

The government seeks to have the firm return $3,250,000 it claims the company made in excess profits. Lincoln Electric, however, denies it has made excess profits. If government claims are upheld, the sum actually will amount to approximately $700,000, after allowances of taxes already paid, it was said.

Pennsylvania

Free Rides Denied

THE state public utility commission on August 10th denied the city of Pittsburgh's petition seeking free transportation for members of the armed forces on the city's streetcars and busses, one commission member declaring the petition was presented "for political purposes only." The city had asked the PUC to permit the Pittsburgh Railways Company and local bus companies to allow uniformed Army and Navy men to ride free on all public conveyances for the duration of the war.

The commission said it was "in full accord with the objective of extending every possible consideration to members of the armed forces," but that the state Constitution and court decisions "plainly outlaw the authorization." Commissioner Ralph W. Thorne charged that the petition was presented by the city "in the full knowledge that it was unconstitutional, but with the hope that it might embarrass the commission."

Transit Tie-up Broken

ALL but three of Philadelphia's 61 trolley lines and all but three of the 41 bus lines, as well as subways and elevated trains, started operations again on August 6th, after a strike that paralyzed the city and crippled its war industries for five days. Operations were resumed a day ahead of the deadline fixed by Major General Philip Hayes, in charge of the city's transit system.

To implement the back-to-work order, General Hayes issued orders canceling vacations for PTC employees and those away were requested to return at once. Notices of the no-vacation order were posted in car barns throughout the city. Training of eight Negroes as operators—cause of the strike—would continue, it was announced.

Federal authorities expedited plans for a grand jury investigation to punish those responsible for the strike, and war agencies in Philadelphia mobilized their staffs to invoke the penalties ordered by the Army if General Hayes' orders are violated. Penalties include summary discharge for failure to go to work and no chance for a new job under a ban by the War Manpower Commission for the duration; reclassification of all draft-age men; and arrest for violation of the Smith-Connally Act.

The company was restored to private operation on August 17th.

Wisconsin

Purchase Price Upheld

CIRCUIT Judge Herman W. Sachtjen recently approved the $24,900 purchase price for the Pardeeville Electric Light Company, set by the state public service commission on December 3, 1941, for acquisition of the utility by the village of Pardeeville.

The court decision, upholding the commission's order, closed another chapter in the town's 10-year-old battle to acquire the light company.

The case had been before the late Circuit Judge August C. Hoppmann, as directed by the state supreme court, for a decision on the basis of record without taking further evidence. Sachtjen ruled that the commission-set price was sustained by evidence and that the terms and conditions for acquisition of the utility by the town, as set forth in the commission's order, were reasonable.

The method followed by the commission in fixing the purchase price has been approved by the state supreme court, Sachtjen said. He explained that the commission had fixed the price on the value of the property as it existed on December 31, 1941, "including the going value of the utility and all other proper allowances, but excluding the value of materials, supplies, and laboratory equipment on hand, and irrespective of additions or retirements made subsequently to December 31, 1941."

Appeal from the commission's order was taken by the company.

The Latest Utility Rulings

Rules Require Gas Utilities to Provide Facilities in Streets

RULES relating to the installation of mains, services, connections, and facilities and extensions of gas corporations have been adopted by the New York commission. These place upon the utilities the obligation to construct, operate, maintain, and when necessary replace, at their own cost and expense, all such facilities within the territorial limits of public streets and roads.

Objections to the power of the commission to prescribe such rules were rejected. One objection was based upon a statute, enacted in 1859, relating to the supply of gas to consumers within 100 feet of an existing main. It was argued that, the legislature having occupied the field, the commission had no authority to impose obligations to render service to prospective consumers over 100 feet away. This conclusion was termed fallacious in an opinion by Chairman Maltbie. He pointed out that the Public Service Commissions Law, enacted in 1907, inaugurated an entirely new régime in regulation, defining the duties of public utilities in general language. No provision in the law intimates or could be used as a basis for an argument that the legislature intended to exclude the commission from a portion of the regulatory field.

Another legal point raised was that the proposed order adopting these rules was illegal because it violated a statutory prohibition against gas service charges. Chairman Maltbie said that to assume that this statute was aimed at or intended to affect extensions over 100 feet was without foundation of fact.

The rules provide that when an owner or occupant of property, abutting on any street in which there is no gas main within a distance of 100 feet from his property, makes written application for service, the corporation shall extend its system to serve the property, provided (1) the applicant assures the corporation that he will be a reasonably permanent customer, and (2) that he agrees to pay an annual surcharge of 9 per cent of excess cost to cover return, depreciation, taxes, and maintenance.

Whenever more than one customer is connected, the surcharge is to be adjusted by a reasonable allocation to customers served.

It was the opinion of the commission that it is unwise to have gas property in the streets owned or maintained by private individuals. The conflicts and disputes resulting therefrom and from claims arising when consumers or property owners pay for gas facilities in streets clearly indicate that such a mixture of property and obligations is not in the public interest. Various objections to the proposed rules and suggestions as to modifications were dealt with by Chairman Maltbie.

Regarding the adequacy of the surcharge, he observed that an extension of service into new territory is often not immediately productive, and utilities often extend their lines knowing that they will not yield a fair return immediately and perhaps not for several years. If utilities were to extend their lines only when all charges are met immediately on each extension, new territory would seldom, if ever, be developed. No utility actually operates on this theory, he said. There are always areas and consumers who do not yield a fair return. There are other areas and consumers that yield more than a fair return.

Figures submitted by company witnesses, Chairman Maltbie continued, took no account of the fact that gas rates, wholly apart from the surcharge, include provision for return, depreciation, taxes, maintenance, and other costs on the generating, transmission, and distribution system generally. No allowance had been made by company witnesses for anything to represent the gas consumed. Their figures, he said, really assumed that no gas was supplied.

Reference was made to the fact that the commission had adopted an order establishing similar rules and regulations for waterworks corporations in *Re* Rules, Regulations, and Practices of Waterworks Corporations (1940) 34 PUR(NS) 116. Chairman Maltbie said that since the adoption of those rules the commission had not been besieged by the public or the companies to amend them, and the commission believed that there was general, if not universal, acceptance of the order as just and reasonable. *Re Rules and Regulations regarding Installation of Mains and Facilities by Gas Corporations (Case 10866).*

Holding Company Control of Gas and Electric Company Approved and Security Issues Authorized

THE Connecticut commission granted an application for approval of the proposed exercise of control by Derby Gas & Electric Corporation of the Danbury & Bethel Gas & Electric Light Company, which it proposed to acquire from Cities Service Power & Light Company. Derby Gas & Electric Corporation now owns the outstanding stock of the Derby Gas & Electric Company and the Wallingford Gas Light Company. Since it is a holding company, approval of control is required by subparagraph (f) of § 1414c of the Cumulative Supplement to the General Statutes of Connecticut (Revision of 1930).

Authority was also granted for the issuance by the Danbury & Bethel Gas & Electric Light Company of 40,000 shares of common stock at the par value of $25 per share, the proceeds of which would be used to redeem preferred stock and outstanding callable bonds.

The commission said:

> The territory served by the Danbury Company is contiguous to the territory served by the Derby Gas & Electric Company. At the present time both the Danbury Company and the Derby Company purchase current from the Connecticut Light & Power Company in varying amounts. The main substation of the Danbury Company's system is located in Danbury approximately 20 miles from the generating plant of the Derby Gas & Electric Company, although by the construction of only approximately 6 additional miles of transmission lines the said substation of the Danbury Company can be connected with the generating station of the Derby Gas & Electric Company. With the installation of additional generating capacity and the construction of the above-mentioned 6 miles of transmission lines, which are contemplated after the national emergency, the Derby Gas & Electric Company's generating plant will be in a position to supply all the power requirements of both the Derby Company and the Danbury Company, which the company claims will thereby effect economies in the cost of power. Some economies can be effected immediately in the matter of making available the personnel of both the Danbury Company and the Derby Company for the benefit of each. Also the high ratio of the Derby Company in sales of electric energy for industrial purposes and the low ratio of industrial sales of the Danbury Company will bring about a more balanced distribution of electricity among different classes of customers if and when the interconnection of the facilities of the two operating companies takes place at a later date. These matters of economy are in the public interest, justifving the approval of the application of Derby Gas & Electric Corporation under the "holding company" provisions of § 1414c of the General Statutes; namely, subparagraph (f) thereof.
>
> In view of the improvement in the capital structure of the Danbury & Bethel Gas & Electric Light Company effected by this application, and in view of the otherwise unchanged financial position of that company, the commission believes its application should be also approved.

Derby Gas & Electric Corporation also requested approval for the exercise of authority or control over its two presently owned operating subsidiaries. The stocks of these corporations had been acquired in 1927, about eight years before the passage of present § 1414c, and in the opinion of the commission no such approval became necessary. In view of the company's request, such approval was also given. *Re Derby Gas & Electric Corp. et al. (Docket No. 7527).*

Transfer of Operating Rights Approved over Objections of Minority Stockholders

An application for approval of the transfer of franchises, consents, and rights of the Rochester Electric Railway Company to the Rochester Transit Corporation was granted by the New York commission, although a minority stockholder of the Rochester Electric Railway Company objected. The Rochester Electric Railway Company formerly owned and operated a street railway line along a street over which the Rochester Transit Corporation has for several years operated busses under a long-term lease which expired June 30, 1944. Rochester Transit Corporation owns 88.8 per cent of the stock of the other corporation.

The lease, in the opinion of the commission, had served its purpose. It was no longer needed. The transit company had no intention of renewing it. If existing franchises of Rochester Electric Railway were not transferred, doubtless a direct franchise could be obtained from the city, which would be in the interest of the riding public, rather than to continue an excessive rental under the old lease. The interest of individual stockholders weighed against the general public interest would not warrant disapproval of the proposed transfer.

No cost had been recorded on the books of the Rochester Railway Company for securing the franchises, consents, and rights of that company, although the objecting stockholder asserted that the lease was "worth a great deal of money." No proof of such worth or cost was offered in evidence by the company.

It was pointed out that the law prohibits the capitalization of rights granted to operating companies by the public, and the commission has consistently followed the policy of excluding from capitalization other than the actual legitimate costs of obtaining the franchises or rights.

Assignment of the rights was to be made for a nominal consideration of $1, and the Rochester Electric Railway Company was to be dissolved. *Re Rochester Transit Corp. et al. (Case No. 11,545).*

Street-lighting Rates to Be Fixed for Areas and Not Separate Municipalities

A claim by a village for special consideration in street-lighting rates was rejected by the New York commission. It was held that the rates should be fixed on the basis of general costs of a company serving many communities, with particular application to the facilities and actual service furnished.

A representative of the village contended that it should "pay for what it gets" and not pay the general rate. It wanted a rate base specifically on the cost less depreciation existing in the specific property used to provide street lighting in the village and not on the general over-all cost of the company. The testi-

mony indicated that the property in this village was very old and much depreciated. Commissioner Burritt, speaking for the commission, said:

> The propriety of fixing uniform rates for groups and areas has been upheld for many years by this commission. An examination of the tariffs of gas and electric companies that operate in extended territory will show that separate rates are not usually established for each city, town, or village but that all like consumers in a given area are charged the same rates. The Interstate Commerce Commission has gone even further and fixed uniform rates and fares for transportation by railroads that apply not only to a single railroad but to all railroads operating in a broad area.
>
> This procedure has been so uniformly followed that it is not now open to discussion. Therefore, it remains only to consider whether rates to municipalities for street lighting require a different treatment and whether the established rule applicable to all other classes of consumers should be disregarded and the costs and property in every municipality must be considered separately and rates based on such separate costs and property be established. There appears to be no reason why such an exception should be made. The statutory exemption of municipal contracts has no application for it is only when no such contract exists that the commission may act. The only purpose of the statutory exemption is to place outside of commission regulation rates fixed by a municipal contract. If such an agreement has not been made the exemption has no application and the same procedure must be followed as would be followed in any other type of rate case.
>
> It therefore appears that this commission can legally fix and establish rates for an electric utility furnishing electricity for street lighting applicable in a given area even though such area includes two or more municipalities, and even though there is a variation in the actual costs and property of the utility in the different municipalities.
>
> It should be understood that this does not mean that a utility cannot properly enter into a contract with a particular municipality fixing rates for street lighting. Such contracts are exempted by statute from the jurisdiction of this commission.

Sinclairville v. Niagara, Lockport & Ontario Power Co. (Cases 10513, 10544).

Clarification of Order Relating to Relocation Of Facilities at Crossing Denied

A PETITION by the Pennsylvania Railroad Company for clarification and amendment of an order relating to the construction of a crossing above grade was denied by the Pennsylvania commission where, in the opinion of the commission, there could be no misunderstanding of the order. Clarification was sought because a dispute had arisen as to reimbursing an electric company for the cost of relocating its facilities at the crossing.

The commission, in approving construction, had ordered that any relocation of public utility facilities incidental to the improvement should be made by the public utility, and the commission directed the railroad company to pay all compensation for damages due to owners for property taken, injured, or destroyed by reason of the construction of the crossing improvement. The track involved was laid under an agreement between the Navy Department and the railroad company in order to provide an industrial siding to serve a naval supply depot, and the government declined to pay a bill for reimbursement of the power company, although a telephone company had been reimbursed.

Each of the utilities involved, said the commission, had been a party at interest in like proceedings, and it seemed clear that they had no misapprehension concerning the interpretation of the order or the intent behind its issue. Their respective positions indicated that the railroad company interpreted the commission's order in its intended aspect by undertaking to pay all costs. The unequivocal reimbursement of the Bell Telephone Company for its costs and the anticipated reimbursement to the power company established that fact.

The Pennsylvania Public Utility Commission added:

There can be no misunderstanding of the order; property of the Bell Telephone Company of Pennsylvania and Pennsylvania Power & Light Company was taken, injured, or destroyed, and the damages thus sustained are, under the order, payable by the Pennsylvania Railroad Company. The railroad company's right to recover from The United States government depends upon the contract between them, and is a matter beyond our jurisdiction.

Re Pennsylvania Railroad Co. (Application Docket No. 61583).

Interlocutory Orders of SEC Not Reviewable

A PETITION by a stockholder in a holding company for review of orders of the Securities and Exchange Commission was dismissed by the United States Circuit Court of Appeals for the Second Circuit on the ground that the orders were interlocutory. They were in the form of letters addressed to the stockholder in reply to letters written by him to the commission.

They denied a motion that the commission overrule a trial examiner's revocation of the stockholder's privilege of limited participation in a pending proceeding, a motion that the hearing in progress before the trial examiner be continued for one week, and a motion that the trial examiner be removed.

The court declared that the orders refusing to remove the trial examiner and to grant a continuance of the hearing were obviously interlocutory, and only final orders of the commission were subject to review.

Refusal to overrule the revocation of the stockholder's limited participation was said to be likewise not reviewable. Whether a person shall be permitted to participate in proceedings "in the public interest or for the protection of investors or consumers," the court held, is discretionary with the commission. Refusal of such participation is like an order denying intervention where intervention is not a matter of right, and such an order is not appealable.

Since the challenged orders were not subject to review, the court held that it had no power to stay them under § 24(b) of the Public Utility Holding Company Act. *Okin v. Securities and Exchange Commission.*

Other Important Rulings

A FEDERAL district court held that the Interstate Commerce Commission has no jurisdiction over rates for bus and street car transportation between points in the District of Columbia and points on the Virginia side of the Potomac river where all the operations are performed within the territorial limits of the District of Columbia municipal zone and where such transportation is urban rather than interurban. *Capital Transit Co. v. United States et al. 55 F Supp 51.*

The Wisconsin commission authorized an increase in rates of a small telephone company where the estimated return would be 4.2 per cent, which the commission said was not unreasonable. *Re Eau Claire County Telephone Co. (2-U-1961).*

The Washington commission held that it is not mandatorily required to deny an application for a common motor carrier permit because the applicant may have been guilty of operating without a permit for a period of time more than ten years prior to the present application. *Re Nickerson (Order MV No. 40921, Hearing No. 3236).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Titles and Index

TITLES

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NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION
PUBLIC SERVICE COMMISSION

Re Lockport & Newfane Power & Water Supply Company

Case 10,075
April 14, 1944

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APPEARANCES: Gay H. Brown, Counsel, by Laurence J. Olmsted, Assistant Counsel, for the Public Service Commission; Warren Tubbs, Buffalo, for Lockport and Newfane Power and Water Supply Company.

BURRITT, Commissioner:

History of the Proceeding

This proceeding was initiated by the Commission for the purpose of inquiring into the methods of accounting and the books, records, documents, and other papers of the Lockport and Newfane Power and Water Supply Company (hereinafter sometimes called the Lockport & Newfane Company), and as to whether particular outlays and receipts have been entered, charged, and credited to proper accounts and to determine the original cost of the property employed by said company in the public service and the amount of depreciation accrued thereon. It is a companion to Case 10,074, relating to the affiliated Niagara, Lockport and Ontario Power Company, submitted at the same time. The issue relating to "Overheads" is substantially the same as in that proceeding.

The Lockport & Newfane Company accepted the continuing property record order of the Commission in Case 8970, and notified the Commission to that effect. Commission engineers examined the books, records, and plant of the company. Four hearings were held. More than seventy-two exhibits were received and 213 pages of testimony taken. A brief was filed by company counsel.

History of the Company

The Lockport and Newfane Power and Water Supply Company was incorporated March 16, 1900, by seven individuals under a special act of the New York State Legislature (Chap 154, Laws of 1900). This act read in part as follows:

"Section 1. *Willard T. Ransom*, Henry J. Pierce, John A. Merritt, and Harry L. Random, and their associates and successors, are hereby constituted a corporation by the name of The Lockport and Newfane Power and Water Supply Company. The busi- (ness) of such corporation shall be the development and employment of hydraulic and electrical power, the generating, sale and distribution thereof and of electricity and power, light or heat produced from such electricity, or otherwise, and the supplying of pure and wholesome water to any village, town, or city within the county of Niagara, and the citizens thereof. (Italics supplied.)

"Section 3. The capital stock of such corporation shall be $500,000, in shares of $100 each.

"Section 4. Such corporation may construct and maintain a dam without fishways across the Eighteen Mile creek in the town of Newfane, in the county of Niagara, at or near the old Arrowsmith mill dam and all necessary raceways, reservoirs, sluices, gates, trucks, canals and other appliances, for the proper use of the water of such creek in the development and use of hydraulic and electrical power as herein provided for."

On June 4, 1900, a resolution was passed by the board of directors of the company to issue to Willard T. Ransom (one of its members) 4,993 shares of capital stock and $75,000 of

first mortgage bonds of the company in full payment for certain land and land rights upon and contiguous to Eighteen Mile creek at Newfane, N. Y., then owned by him. These 4,993 shares of stock were issued and together with the 7 shares issued to the original incorporators, represented the total 5,000 shares authorized. None of the $75,000 of first mortgage bonds referred to in Exhibit 24 were ever issued.

The record shows that no development of any kind was undertaken by the company until 1924, when three petitions were made to the Commission in Cases 2116, 2117, and 2118. The Middleport Gas and Electric Light Company (C. 2116), and the Newfane Electric Company (C. 2117), petitioned for authority to sell and transfer their franchises, works, and systems to Lockport and Newfane. The latter company petitioned (C. 2118) for authority to issue stocks and bonds, the proceeds to be used to purchase all the properties of the Middleport Gas and Electric Light Company and the Newfane Electric Company, and to construct a dam and hydroelectric generating plant on Eighteen Mile creek at Burt, N. Y.

In connection with the latter petition (C. 2118), the then owners of the 5,000 original shares of capital stock of the Lockport & Newfane Company agreed to surrender for the benefit of the company 3,500 shares, retaining 1,500 shares for themselves. The properties so acquired by the Lockport & Newfane Company from Middleport Gas and Electric Light Company and Newfane Electric Company were principally electric distribution systems. No generating plants were included.

In 1924 the Lockport & Newfane Company started construction of the Burt hydroelectric generating plant which began operating February 7, 1925. Construction continued on into 1927 when the plant was operating at its full capacity of 5,000 kilovolt amperes. In December, 1926, the company acquired the electric distribution system in the village of Middleport, N. Y., from the Western New York Utilities Company (Case 3230).

In 1924 at the time of starting construction of the Burt plant, the company was receiving at the Burt plant site the benefit of 275 cubic feet per second of water diverted from the Niagara river under a preliminary permit from the Federal Power Commission. This 275 cubic feet per second was a part of the 20,000 cubic feet per second which the United States was permitted to divert from the Niagara river under the treaty between United States and Canada made in 1909. A license for this diversion was issued in 1926. Certain other plants located on Eighteen Mile creek were also receiving benefits from this water diversion. In 1928 the Lockport & Newfane company (along with certain other companies) surrendered the license to the Federal Power Commission for cancellation and assigned and conveyed to the Niagara Falls Power Company, an affiliate, any and all rights it may have had to the use of such diverted water. Accordingly on October 1, 1928, the Lockport & Newfane Company ceased to receive this 275 cubic feet per second of treaty water, which resulted in materially reducing the

available water supply at the Burt plant.

Section 70 of the Public Service Law then in effect, provided in part as follows:

"Transfer of franchises or stock.—No gas corporation or electric corporation shall transfer or lease its franchise, works or system, *or any part of such franchise, works, or system* to any other person or corporation or contract for the operation of its works and system, without the written consent of the Commission." (Italics supplied.)

Notwithstanding the provisions of the law quoted above, the Lockport & Newfane Company transferred its claimed water rights in Eighteen Mile creek to the Niagara Falls Power Company, an affiliate, without either company requesting permission from the Public Service Commission.

Balance Sheet Adjustments

Mr. Albert L. Halkin, a valuation engineer employed by the Commission, submitted a balance sheet which sets forth adjustments that he recommended should be made to the balance sheet accounts. Some of the minor adjustments proposed by Mr. Halkin were agreed to by the company. Others were not. A balance sheet per books at January 1, 1938, and as proposed by Mr. Halkin, with adjustments (including a "Balance for Further Disposition"), follows as Table I:

TABLE I (a)
ADJUSTED BALANCE SHEET
January 1, 1938

Assets and Other Debits	Per Books January 1, 1938	Adjustments Debit	Adjustments Credit	Adjusted January 1, 1938
Utility Plant				
Electric Plant in Service	$	$603,259.77	$	$603,259.77
Construction Work in Progress	67,030.24	.....	.....	67,030.24
Unclassified Electric Plant	1,212,005.33	.....	1,212,005.33	.....
Total Utility Plant	$1,279,035.57	$603,259.77	$1,212,005.33	$670,290.01
Other Physical Property	$3,942.51	$	$	$3,942.51
Other Investments	1,687.89	.....	.....	1,687.89
Total Investment and Fund Accounts	$5,630.40	$	$	$5,630.40
Cash	$14,742.05	$	$	$14,742.05
Special Deposits	180.00	.....	.....	180.00
Accounts Receivable	13,539.31	.....	.....	13,539.31
Receivables from Associated Companies	3,235.63	.....	.....	3,235.63
Materials and Supplies	3,438.96	.....	.....	3,438.96
Total Current and Accrued Assets	$35,135.95	$	$	$35,135.95
Retirement Work in Progress	$1,625.06	$	$	$1,625.06
Other Work in Progress	901.56	.....	.....	901.56
Other Deferred Debits	213.49	.....	.....	213.49
Total Deferred Debits	$2,740.11	$	$	$2,740.11
Capital Stock Expense	$	$68.60	$	$68.60
Balance for Further Disposition	.....	606,617.19	.....	606,617.19
Total Assets and Other Debits	$1,322,542.03	$1,209,945.56	$1,212,005.33	$1,320,482.26

TABLE I (b)
ADJUSTED BALANCE SHEET
January 1, 1938 (Continued)

Liabilities and Other Credits	Per Books January 1, 1938	Adjustments Debit	Adjustments Credit	Adjusted January 1, 1938
Common Capital Stock	$389,500.00	$	$	$389,500.00
Advances from Associated Companies	180,000.00			180,000.00
Accounts Payable	3,641.90			3,641.90
Payables to Associated Companies	19,053.36			19,053.36
Customers' Deposits	3,913.07			3,913.07
Taxes Accrued	1,594.28			1,594.28
Interest Accrued	147.28			147.28
Total Current and Accrued Liabilities	$28,349.89	$	$	$28,349.89
Other Deferred Credits	$101.12	$	$	$101.12
Reserve for Depreciation of Electric Plant	69,952.57		5,749.77	75,702.34
Reserve for Uncollectible Accounts	487.94			487.94
Other Reserves	487,835.89	485,150.00		2,685.89
	$558,276.40	$485,150.00	$5,749.77	$78,876.17
Contributions in Aid of Construction	$201.60	$	$	$201.60
Earned Surplus	166,113.02	7,809.54		158,303.48
Balance for Further Disposition			485,150.00	485,150.00
Total Liabilities and Other Credits	$1,322,542.03	$492,959.54	$490,899.77	$1,320,482.26

[1] Mr. Halkin testified with regard to the debit item of capital stock expense under Assets, amounting to $68.60, that the company in reclassifying its electric plant accounts transferred $523.75 to Capital Stock Expense. Mr. Halkin's analysis was presented in Exhibit 15, and shows that $252 related to organization expense and expenses in connection with increasing the capital stock of the Middleport Gas and Electric Company; that $203.15 related to organization expenses and expenses in connection with increasing the capital stock of Newfane Electric Company; and that only $68.60, the cost of lithographing stock certificates, related to the Lockport & Newfane Company.

As shown on the company's books at January 1, 1938, this amount of $523.75 was included in the $1,212,005.33 in Unclassified Plant. Mr. Halkin proposes a credit to Unclassified Plant of $523.75, a charge to Capital Stock Expenses of $68.60, and a charge to Surplus of $455.15 for the expenses relating to organization and capital stock expenses of predecessor companies. This treatment is correct and should be approved.

Under Liabilities, Mr. Halkin shows a debit to Earned Surplus in the amount of $7,809.54. This consists of $7,354.39, which the company proposes to credit to Unclassified Plant and charge to Surplus, this being an amount formerly included on the company's books in the account Organization, and also the $455.15 discussed above.

Mr. Halkin has also set up a credit adjustment to Reserve for Depreciation in the amount of $5,749.77. He testified that this was a net adjust-

ment resulting from a correction of over-retirements, and that the company had already made this adjustment on its books.

Mr. Halkin further proposes to credit to Unclassified Plant and to charge to Electric Plant in Service $603,259.77, which in his opinion represents the original cost of Electric Plant in Service as of January 1, 1938. The company did not agree that this amount correctly represented the original cost of Electric Plant in Service, and the matter was the subject of considerable testimony, which will be reviewed later herein.

Original Cost of Electric Plant in Service

The Uniform System of Accounts for Electric Corporations effective January 1, 1938, as amended, defines original cost as follows:

" 'Original Cost' as applied to electric plant means the cost of such property to the person first devoting it to public service."

Mr. Halkin testified that the original cost of Electric Plant in Service which he set forth in Exhibit 14 was developed in accordance with the provisions of this system of accounts.

Mr. Halkin's Balance for Further Disposition

Mr. Halkin's original cost of Electric Plant in Service is set forth on a balance sheet and also in Electric Plant in Service, as $603,259.77. He also showed on the balance sheet under assets (as of January 1, 1938), an amount of $606,617.19, and under liabilities $485,150, each of which he designated for convenience "Balance for Further Disposition." This latter amount was transferred from "Other Reserves." Mr. Halkin admitted that there was no account in the Uniform System of Accounts entitled "Balance for Further Disposition" but he used that designation to represent the total book cost as of January 1, 1938, for sundry items which he had not definitely assigned to one or more balance sheet accounts and which are thus set out for disposition by the Commission. He stated that he had eliminated certain items which he believed should not be included in Electric Plant in Service.

Mr. Halkin's asset item, "Balance for Further Disposition" as of January 1, 1938, is made up of the following items:

Organization Expense	$17,500.00
Added Overheads	11,332.88
Burt Plant	574,979.68
Flume at Lockport	2,804.63
Total	$606,617.19

The above items, together with the question of the use and usefulness of the Burt hydroelectric generating station represent the real issues in this proceeding. The company did not challenge any other items of Mr. Halkin's determined original cost included in the amount of $603,259.77 for Electric Plant in Service nor question the adjustments already referred to.

Organization Expense

[2–5] Mr. Halkin testified that the company's books and records show the $17,500 for organization expense to be the aggregate face amount of notes issued to George F. Thompson, an attorney, as payment for services and expenses in connection with drawing

petitions in Cases 2116 and 2117, Middleport Gas & Electric Light Co. and Newfane Electric Co., respectively, requesting the Commission's authority to sell their properties to the Lockport & Newfane Company; and also the petition in Case 2118, the Lockport & Newfane Company, asking the Commission's authority to issue stocks and bonds and to purchase the properties of these two other companies. In the first two cases Mr. Thompson represented both the buyer and the seller.

Mr. Halkin excluded this $17,500 from his original cost of electric plant in service January 1, 1938, as he was of the opinion that it was not an item properly chargeable to organization expense under the Uniform System of Accounts for Electric Corporations effective January 1, 1938.

Mr. Tubbs, company counsel, agreed to a voluntary write-off of this organization expense item, "irrespective of its merits," *provided* the consolidation of the Lockport & Newfane Company with the Niagara, Lockport and Ontario Power Company, asked for by petitioner in Case 10404, was allowed or permitted by the Commission. The petition in Case 10404 was withdrawn by the companies May 7, 1941.

Mr. Tubbs admitted that the company's records and files did not contain any specific proof as to what services were represented by the $17,500 item of organization expense. He said that he had been advised by the Commission's staff that in the absence of such proof this item would be recommended for further disposition or disallowance. He offered, however, a copy of a letter dated June 3, 1941, received by him from Mr. George F. Thompson, attorney, describing in a general way what services he performed in connection with the $17,500 organization expense item. Counsel for the Commission stipulated that Mr. Thompson, if called as a witness, would testify to the facts stated in the letter, and it was received as Exhibit 39.

In his letter Mr. Thompson stated that in 1923 he was associated with a number of men in reorganizing the Lockport & Newfane Company. He and these men acquired all of the stock of the company, which while organized in 1900 had never been active before. They also arranged to buy the assets of the Middleport Gas & Electric Light Company and the Newfane Electric Company. Mr. Thompson prepared the necessary petitions to the Commission for both of these companies and also, as attorney for the Lockport & Newfane Company, assisted in these negotiations and prepared the petition of this latter company asking authority to issue stock and bonds and to purchase the properties of the two former companies. He also made all appearances before the Commission in these various matters. He employed another firm for some of the work in connection with the issuance of funded debt, and paid this firm (Storrs & Storrs) $2,500 for their services. Mr. Thompson was paid $15,000 for his own services. Mr. Thompson stated in his letter that besides the $2,500 payment to Storrs & Storrs for services in connection with the issuance of bonds, about $2,500 of his services were also related to that part of the work. The balance of his charge

(amounting to $12,500), he stated related to the organization and reorganization of the Lockport & Newfane Company, and the acquisition by it of the properties of the Middleport and Newfane companies.

The record above shows that the Lockport & Newfane Company was organized in 1900 by a special act of the New York State Legislature and Mr. Willard T. Ransom appears to have been the principal organizer of the company at that time. He then became its president and secretary, a director and member of the executive committee, and its principal stockholder. The present Public Service Law was not passed until 1907, so for the period 1900–1907 this company was not under the jurisdiction of this Commission. As shown by Exhibit 39, Mr. George F. Thompson did not come into this corporate picture until 1923.

The Uniform Systems of Accounts for Electric Corporations (1) effective January 1, 1909, (2) effective July 1, 1924, and (3) effective January 1, 1938, all carry provisions that costs in connection with the selling of bonds or other evidence of indebtedness shall not be included in organization expenses but that the costs of putting the company "into readiness to do business," as well as costs incident to organizing the corporation, shall be included in organization expenses.

Although the record is clear with respect to the fact that while Mr. Ransom organized the company in 1900 with full authorization to develop, generate, distribute, and sell electrical energy, he appears to have been content to merely hold the land and the authority to do business, without actually doing anything further. This dormant condition continued for some twenty-three years until 1923, when Mr. George F. Thompson and his associates decided to get the Lockport and Newfane Company into condition to do business and to render service to consumers. There is no question that Mr. Thompson accomplished this, and it would appear that some proportion of the money paid him might properly be charged to electric plant Account 301-Organization, as an expenditure for putting the company "into readiness to do business." The problem is, what portion may properly be included in the Organization account.

According to his letter, Mr. Thompson was engaged in reorganizing the Lockport & Newfane Company, but the record is clear that this company was not reorganized. He does state, however, that some of his charges related to the organization of this company and the acquisition by it of the property of Middleport Gas & Electric Company, and the property of the Newfane Electric Company. The Lockport & Newfane Company purchased the franchises, works, and systems of these other two companies (mainly distribution systems), giving its securities in payment, and then proceeded to build a hydroelectric generating station to supply the necessary electrical energy.

In all of this development work in 1923–1924 Mr. Thompson appears to have taken the dominant lead. His stock represented 25 per cent of the Newfane Electric Company stock voting to sell its property to the Lockport & Newfane Company, at the

stockholders' meeting of February 23, 1924, and on the same day Exhibit 30 shows that for a similar meeting of the stockholders of the Middleport Gas & Electric Light Co., Mr. Thompson's stock represented 17 per cent of the stock of this company voting to so sell its properties.

In July, 1924, Mr. Thompson owned 20 per cent (1,000 shares) of the stock of the Lockport & Newfane Company, and he, along with four others owning a like number of shares, each agreed to turn back 700 shares to the company. Mr. George F. Thompson was president of the Lockport & Newfane Company in 1926. It is evident that he was more than just an attorney for this company for he appears to have been the principal one to actually get the company started as an electric utility.

This appears to be a logical conclusion, but the amount of organization expense to be allowed for his services in this connection must be determined on the basis of an estimate of the various services he performed. The record shows that the Commission received three simultaneous petitions in 1924 prepared by Mr. Thompson all relating to a general plan of amalgamation of the properties of these companies. The petitions in Case 2116 and Case 2117 were filed by the Middleport Gas & Electric Light Company and the Newfane Electric Company under § 70 of the Public Service Law of New York state for consent to sell and transfer their franchises, works, system, etc., to the Lockport & Newfane Company. None of Mr. Thompson's time spent on preparing petitions, etc., for either of these companies themselves should be capitalized by the Lockport & Newfane Company even though this latter company is shown to have joined in both of these petitions. Under the circumstances it is difficult to draw the line between where Mr. Thompson's work stopped for one company and began for another. In any event it does not appear that expenses incurred in connection with the purchase of physical property, as was done here, are properly includable in Organization.

The petition in Case 2118 was made by the Lockport & Newfane Company under § 69 of the Public Service Law. This petition recited that the company heretofore had just been the owner of property for which it was authorized to use for the purpose of generation or distribution or sale of electricity but had never erected a dam on its power site and could not generate power before. The petition requested approval of the issuance of securities, the proceeds of which were to be used to purchase the properties of the Middleport Gas & Electric Lighting Co., and the Newfane Electric Co., and to build a dam and a hydroelectric generating station on its property. As a result of these actions, which were subsequently carried out with Commission approval, the company emerged from its dormant state and began generating, distributing, and selling electrical energy. This petition also indicated that early in 1924 two changes had been made to amend the articles of incorporation of this company in changing the address and number of board of directors, in which action Mr. Thompson participated.

The final report of the Commis-

sion's accounting division dated August 7, 1927, in Case 3606, The Lockport & Newfane Company (see PUR 1928B 183) included a proposed adjustment transferring $17,500 out of the account (per books), "Law Expenditures during Construction," and placing it in the "Organization" account. While it seems probable that this amount was put in the Organization account of the company as a result of this proposal by the Commission's staff, it is doubtful if the Commission's staff had available at that time as much information on this item as was contained in Mr. George Thompson's letter, particularly with respect to the amounts involved in the issuance of securities. Mr. Halkin rejected the total of $17,500 from Organization Expense in his Exhibit 14, and Exhibit 39 clearly shows that at least $5,000 of this amount should not be included in this account for it related to the issuance of bonds.

The record shows that Mr. Thompson, for the remaining of $12,500 paid to him, performed services in drawing up petitions, etc., for the two other companies which were later purchased by the Lockport & Newfane Company, and the payment for such services could hardly be included in the Organization account of the latter company. His estimate of $2,500 as relating to the mortgage and bond work of the company appears much too conservative in view of the large amount of legal work usually involved in such transactions.

There is nothing on the Lockport & Newfane Company's books for the cost of its organization in 1900. The company contends that it was the acts of Mr. Thompson in 1923 and 1924, for which at least a part of the $17,500 was paid, that put it in readiness to do business. The amount has stood unquestioned for nearly twenty years, and while some portion of the services generally described may be properly classified in the Organization account, other portions may not properly be so classified. Although there is insufficient breakdown in this record to accurately classify all the items, I believe that some amount is properly allowable. How much, is a matter of an informed estimate.

Mr. Thompson's letter shows, and the company apparently concedes, that at least $5,000 of the $17,500 related to the issuance of bonds. From a careful examination of the papers in Case 2118, wherein $300,000 of mortgage bonds and $389,000 par value of stock were authorized by order dated November 12, 1924, it appears that this apportionment of $5,000 is undoubtedly too low. Mr. Thompson's work (C. 2118) included the drawing of a 91-page trust indenture with long descriptions of some 35 parcels of property, a first mortgage of 83 pages, and other related papers. These with the issuance of the stock would appear to have required by far the greater part of the work done. This evidence indicates that at least about $10,000 of the $17,500 fee should be assigned to the issuance of securities. It is estimated that about three-quarters of the $10,000, or $7,500 ($5,000 is admitted) is applicable to the issuance of bonds and the balance to the issuance of capital stock. Since the bonds are no longer outstanding the $7,500 improperly placed in Organization Account should be charged to Earned

Surplus. The balance of $2,500 is a proper charge to Account 151, Capital Stock Expense.

Of the remaining $7,500 certainly not less than one-third is assignable to the drawing of each of the two petitions in acquiring the properties of the Middleport Gas and Electric Light Company (Case 2116) and the Newfane Electric Company (Case 2117) and to other work relating to these acquisitions. These cases involved only the acquisition of physical property. There was no merger or consolidation. These charges are not proper organization costs and should now be charged to Earned Surplus.

This leaves $2,500 of the $17,500 which appears to be properly allocable to the work of Mr. Thompson in putting the Lockport and Newfane Company, organized in 1900 but entirely dormant to 1924, in readiness to serve. That this proposed allocation is reasonable and ample is further indicated by comparing it with the size of this company. While it is true that the initial organization of the company by Mr. Ransom occurred in 1900, when it was incorporated and set up on paper, the record clearly shows that nothing more was done until 1924 and that the organization of the company was completed at that time by Mr. Thompson. It might be held that the only proper organization cost was that incurred in 1900. But none of this cost was ever capitalized by the company and none is claimed now. Under all these circumstances I believe it is proper and reasonable to permit the capitalization of $2,500 of the 1924 costs as organization.

I recommend that the $17,500 be disposed of by charging $2,500 to Account 151, Capital Stock Expense; $2,500 to Account 301, Organization; and $12,500 to Earned Surplus.

Added Overheads [1]

[6, 7] The second amount on the company's books, questioned by Mr. Halkin, is an overhead item of $11,332.88 as to which he testified as follows:

"The amount of $11,332.88 designated as 'Overheads' in Table 3 of Exhibit 14 for identification is the aggregate at January 1, 1938, of balances of sundry amounts previously entered as overheads by the company on its books, and I have found no evidence that this amount represents actual expenditures."

Mr. Halkin was not cross-examined by the company as to the extent and scope of his investigation of these overheads. Commission counsel asserted that "there is nothing shown to indicate that those overheads were actually incurred." The burden of proof was clearly upon the company to present evidence to show that these overheads represented actual expenditures. The issue is whether or not these were actual expenditures, and whether this amount represented original cost as defined in the Uniform System of Accounts for Electric Corporations, effective January 1, 1938.

Counsel for the company indicated that he relied solely on prior orders of the Commission which he claimed were based on reports of its accounting and engineering staff in various prior cases relating to the company and its predecessors. Mr. Laurence

[1] This same question arises and is more fully discussed in my report in Case No. 10,074, Niagara, L. & O. Power Co. submitted currently.

W. Buchanan, assistant treasurer of the Lockport and Newfane Company testified as to his familiarity with these various cases and described in a general way what action was taken by the companies as a result of the Commission order in each case. The Commission orders in many of these prior cases required the companies to enter upon their books certain proposed journal entries as contained in reports of the Commission's accounting division. In many instances these proposed journal entries included overheads which Mr. Buchanan summarized in Exhibit 36. He also prepared in Exhibit 37 a statement of the amount of surviving overheads as of December 31, 1937, in the continuing property record of the Lockport and Newfane Company. The following shows the overheads in Exhibit 37 (excluding Burt plant overheads), the total being the same as that shown by Mr. Halkin in Exhibit 14:

Account No.		
351,	Engineering and Superintendence	$3,659.60
352,	Law Expenditures during Construction	114.73
353,	Injuries and Damages during Construction	854.82
354,	Taxes during Construction	436.35
355,	Interest during Construction	3,271.28
356,	Miscellaneous Construction Expenditures	2,996.10
	Total	$11,332.88

The definition of original cost in the continuing property record order is practically the same as that previously quoted from the Uniform System of Accounts for Electric Corporations, effective January 1, 1938. No such definition of original cost is to be found in the two prior Uniform Systems of Accounts which were in force during the period when these overheads were placed on the books of the company or its predecessors. The Commission's staff naturally followed the Uniform System of Accounts effective at the time these book entries were made. No proof was offered by the company to show that these book entries represented original cost as now defined. Original cost as then used by both company and Commission accountants appears to have meant either the original capital put into service at the outset of an enterprise, or the original (book) cost used in crediting the fixed capital accounts for property retired from service. An examination of these prior systems of accounts indicates that "Fixed Capital" as prescribed and to be entered therein after 1908, was intended substantially to represent *book* cost whereas "Electric Plant in Service" as prescribed in the present system is required to represent *original* cost as therein defined, and the two are not necessarily the same.

The two earlier uniform systems of accounts provided separate accounts for certain of these general overhead costs but the Uniform System of Accounts for Electric Corporations effective January 1, 1938, provides that all overhead construction costs be charged to particular jobs or units. The Uniform System of Accounts for Electric Corporations effective July 1, 1924, and the Uniform System of Accounts effective January 1, 1938, each prohibited the use of arbitrary percentages or amounts to cover assumed overhead costs, and it was an accounting error to add them. An examination of Exhibit 36

shows that the overheads from prior cases were on the whole expressed in rounded dollar figures which included the overheads entered on the books in connection with Case 644, the Newfane Electric Company. The following quotation from the report of the Commission's division of engineering, dated July 28, 1922, in Case 644 indicates that the overheads from this prior case shown on Exhibit 36 were applied on a percentage basis:

"The unit prices used in this appraisal include such direct overheads as 'Direct Supervision,' 'Freight,' 'Insurance,' etc. The general overheads, such as 'Engineering and Superintendence,' 'Injuries during Construction,' etc., have been added as separate items, *upon a percentage basis.*" (Italics supplied).

Mr. Halkin found no evidence that these overheads, amounting to $11,332.88, which had been placed on the books in connection with former cases, represented actual expenditures. The company failed to offer proof that these book entries which were made represented original cost as now defined or even actual expenditures, and also to show the particular jobs or units of property to which they were applicable.

On the basis of the record and the evidence presented there appears to be no justification for including the amount of $11,332.88 in Account 101, Electric Plant in Service, as of January 1, 1938, since it does not represent original cost.

[8] From the order in Case 2118 made November 12, 1924, authorizing the issuance of $300,000 of mortgage bonds and $389,500 par value of common stock for the purposes, among others, of acquiring the franchises, works, and systems of the Middleport Gas and Electric Light Company (C. 2116) and the Newfane Electric Company (C. 2117) and from the reports of the accounting division in these cases, it appears that added percentage overheads, amounting to $5,390 and $12,270 respectively, were included in, "the value of assets and depreciated fixed capital" acquired and paid for. Similarly it appears that the purchase price of certain property in Royalton and Middleport acquired from Western New York Utilities included $5,432 for added percentage overheads. Of the total of $23,092, after a small adjustment of $53.87, and after retirements, there remained on the books of the Lockport and Newfane Company as of December 31, 1937 overheads in the sum of $11,332.88.

While this amount does not represent the original cost of these overheads, it appears that the Lockport and Newfane Company paid to its predecessors amounts which included them and they were thereafter entered on the Lockport and Newfane books as overheads in the book cost of the property acquired. This amount of $11,332.88 should therefore be transferred to Account 105, Electric Plant Acquisition Adjustments, as representing the excess of book cost over original cost, and become subject to the provisions of paragraph E thereof.

Burt Plant Original Cost

Mr. Halkin listed the $574,979.68, the book cost of the Burt hydroelectric generating plant shown in his Table 3, Exhibit 14, by accounts as follows:

Account No.		
320	Land and Land Rights	$149,941.49
322	Reservoirs, Dams, and Waterways	274,946.84
323	Waterwheels, Turbines, and Generators	140,350.69
324	Accessory Electric Equipment	9,570.90
325	Miscellaneous Power Plant Equipment	169.76
	Total	$574,979.68

He testified that in his opinion, exclusive of the land and land rights, the book cost of the Burt plant itself substantially represents the original cost. However, he did not consider that the $149,941.49 for land and land rights represents original cost.

[9] Most of this land was originally acquired in 1899 by Willard T. Ransom, who, taking title in his own name, individually and as trustee, quit-claimed the entire tract to the Lockport and Newfane Company by deed dated July 9, 1901. Mr. Ransom was one of the incorporators and became the principal stockholder of this company as well as a director, a member of the executive committee, and its president and secretary. Thus it appears that Mr. Ransom, after having incorporated the company in 1900, paid himself all of the outstanding stock of the company (except the directors' qualifying shares) for land which he himself had purchased in 1899. This absence of arm's-length bargaining makes necessary a careful scrutiny of the cost of this land.

The Lockport and Newfane Company was the "person" who first devoted this land to the public service. Because of the substantial identity of interest between Mr. Ransom and the company it would appear that the original cost of the land to this company should be what Mr. Ransom paid for it. However, the company presented no evidence to indicate the exact amount he paid, relying on its recorded book cost as original cost.

Mr. Halkin presented certain data relating to twenty options and thirty-five deeds involved in the acquisition of this land by Mr. Ransom, on which the Burt plant is located. Most of the deeds named only the nominal consideration of $1 but many of them had documentary stamps affixed. From these stamps, together with the revenue tax rates prevailing at the various dates, Mr. Halkin was able to determine the indicated minimum and maximum considerations. On this basis a total estimated minimum consideration of $42,734 and a total estimated maximum consideration of $54,900 is obtained which excludes one deed for property on which no tax rate was in effect at the time. This deed represented relatively a very small area and its exclusion would not affect the result. The original cost of this land probably lies somewhere between these two estimates.

The history of the book cost of this land ($149,941.49) starts with Mr. Ransom's receipt of 4,993 shares ($499,300 par value) of stock of the Lockport & Newfane Company in payment for same. The record shows that in January, 1914, the stockholders and board of directors of the company voted to accept an offer of $25,000 cash for this land, but it was not sold. Mr. Warren Tubbs, counsel for the company, stated:

"It appears here that the company paid 494,900[2] and some shares of stock for this land, the stock having

[2] Incorrect, as Exhibit shows 4,993 shares ($499,300 par value).

a par value of $100 each share. Maybe they paid too much, I don't know, but that is what they paid and that seems to me at the moment to be the only evidence of the original cost of these lands to this company, and if some years later they thought they made a bad bargain and offered to sell these lands to somebody else for less, I can't see that that has any relation whatever to the question of the original cost of the lands."

On January 22, 1924, five individuals, including George F. Thompson, had purchased and were then the owners of all (5,000 shares of $100 par value each) of the capital stock of the Lockport & Newfane Company. They entered into an agreement which is quoted in part as follows:

"Whereas, the parties hereto have agreed that the property of said corporation now owned by it is worth the *value* of $150,000 of the capital stock thereof, viz.; 1,500 shares of the par value of $100 each, which the parties hereto own in equal shares, and that the remaining 3,500 shares, of the par value of $350,000, shall be held in trust by the parties hereto to be used or sold and the proceeds thereof used for the benefit of said corporation." (Italics supplied.[2])

In 1926 the company recorded this property as land and land rights in fixed capital at $150,000. At this time the 275 cubic feet per second of water from the Niagara river was included in the company's water rights, but in October, 1928, this was sold and conveyed to the Niagara Falls Power Company. Between 1924 and January 1, 1938, a net credit of $58.51 was made in the land and land rights account resulting in the book balance January 1, 1938, of $149,941.49. The company contends that such book balance of $149,941.49 is the original cost.

It thus appears that the present book cost of this land is based solely on the par value of certain stocks. While there is nothing to show the exact amount Mr. Ransom paid for the land, there is ample evidence to show that Mr. Ransom in acquiring it was acting for himself at this time and then formed the company to take it over. Mr. Halkin is the only witness who has offered any evidence as to the cost of this land to Mr. Ransom. It would appear that the original cost of this land was not less than $43,000 and not more than $55,000 or a mean of $49,000. Since Mr. Halkin was unable to estimate the cost of one small parcel from documentary stamps the $49,000 mean is probably a little low. Rounding out this amount to $50,000, I find that the original cost of these lands and land rights to this company did not exceed $50,000.

The book cost of the Burt plant as of January 1, 1938, shown as $574,979.68, should therefore be reduced by $99,941.49 to $475,038.19, which latter amount is found to substantially represent the original cost of this property on that date.

Flume at Lockport

[10] The fourth item questioned by Mr. Halkin in Exhibit 14 is an asset item of $2,804.63 shown in the company's accounts as "Flume at Lockport." He stated that this flume,

[2] Incorrect, as Exhibit shows 4,993 shares ($499,300 par value).

located at Lockport at a point where the Eighteen Mile creek and the Barge canal tend to converge, was constructed about 1924 by the Lockport & Newfane Mill Owners' Association, to conduct water from the canal to Eighteen Mile creek. It was an adjunct of the Burt plant, and the $2,804.63 was the cost to the Lockport & Newfane Company of its interest in the flume. Mr. Carr stated that the flume was plugged with a concrete plug in October, 1928, when the 275 cubic feet per second of water was diverted to the Niagara Falls Power Company. Later, about 1935–36, a hole was punched in the plug by New York state officials to permit some 10 cubic feet per second of water to flow through for sewage dilution purposes. Mr. Tubbs, company counsel, stated that if this amount was prorated down it would amount to next to nothing and suggested that the $2,804.63 be written down to some nominal figure and left there just for a record. It is recommended that it be written down to $1.

Use and Usefulness of the Burt Hydroelectric Plant

The Uniform System of Accounts for Electrical Corporations, effective January 1, 1938, prescribes for Account 101, Electric Plant in Service, that this account shall include the original cost of electric plant owned and used and useful by the utility in the service of the public in its electric operations. Evidence was presented by Mr. Halkin and also by Mr. Wallace B. Carr, an engineer employed by the Lockport & Newfane Company, as to the use and usefulness of the Burt hydroelectric generating plant, and the record of use was brought down to April, 1943. Mr. Halkin stated that he had inspected the Burt plant and was aware that it was operated and while he had given no consideration to the available water supply or average flow of Eighteen Mile creek, it was his belief that the use of the plant was just an incidental use and not a necessary use. The facts of record permit a determination as to whether or not the Burt plant is used and useful at the present time.

Cost and Amount of Generated and Purchased Power

None of the witnesses testified as to the average flow of water at Eighteen Mile creek immediately prior to the construction of the Burt plant in 1924. The record shows that until October 1, 1928, the Burt plant had been receiving the benefit of 275 cubic feet per second of treaty water diverted from the Niagara river to Eighteen Mile creek under a Federal Power Commission permit or license. On October 1, 1928, this water diversion was discontinued and thereafter the Burt hydroelectric generating station became entirely dependent upon the flow of water remaining.

The immediate effect of this change is set forth in Table II, which shows that in 1928 about 82 per cent of the total electric power produced and purchased by the company was produced at the Burt plant while in 1929, the next year, this plant produced only 31 per cent. This table clearly shows the limited production of the Burt plant from 1929 to 1939, inclusive. In the five years 1935 to 1939 it produced an average of only 14 per cent.

TABLE II

Per Cent of Power Produced at Burt Plant to Total of Power Produced and Purchased

Year	Per Cent	Year	Per Cent	Year	Per Cent
1925	67	1929	31	1935	11
1926	93	1930	28	1936	15
1927	88	1931	19	1937	16
1928	82	1932	27	1938	13
		1933	14	1939	13
		1934	10		
Average	82%		22%		14%

[11] Table 5 of Exchange 14 shows the total kilowatt hours available each year, 1925–1939 inclusive, subdivided into amounts generated and amounts purchased. The total available in 1925 was approximately 4⅓ million kilowatt hours; for the five years 1935–1939 inclusive, the average was slightly over 8½ million kilowatt hours; and in 1939 the total was nearly 10 million kilowatt hours. The company purchased power in every year. Up through 1928 its purchases had been solely from other than associated companies but for four years thereafter the company purchased around 5 million kilowatt hours per year solely from its affiliate, the Niagara Lockport & Ontario Power Company (Niagara Lockport). From 1933 to 1939 a small amount came from other than associated companies but the major portion of power was purchased from Niagara Lockport.

It is apparent from Tables 5 and 6 of Exhibit 14 that since October 1, 1928, when the Burt hydroelectric plant was deprived of the 275 cubic feet per second of water diversion on Eighteen Mile creek, its usefulness in the public service declined rapidly and the company was forced to depend largely on the power purchased from Niagara Lockport to meet the demands of the customers it served.

From 1935 to 1939 Lockport & Newfane Company purchased about 37,350,000 kilowatt hours (86 per cent of its energy) for $402,700, or an average cost of 1.078 cents per kilowatt hour.

During the same period about 5,825,000 kilowatt hours were produced at the Burt plant at a cost of $51,700 excluding taxes, annual depreciation, and return upon investment. Adding taxes of $19,800 gives a total of $71,500 excluding annual depreciation and return, or an average cost of 1.228 cents per kilowatt hour.

No evidence was offered as to a reasonable annual charge for depreciation on this plant but such a charge is a necessary part of operating expenses and would therefore increase the cost per kilowatt hour above 1.228 cents. A comparison by years is shown in Table III.

TABLE III

Cost of Power Purchased Compared with Certain Costs of Power Produced at Burt Plant 1935–1939, inclusive, in Cents per Kilowatt Hour

Year	Cost of Power purchased from all companies	Cost of Power Produced at Burt Plant—Includes Hydraulic Production Expenses and Burt Plant Taxes, only
1935	1.067¢	1.591¢
1936	1.077	1.067
1937	1.100	1.073
1938	1.085	1.457
1939	1.064	1.111

An analysis of the operating expenses of this plant indicates that an-

nual maintenance expenses were higher in the 5-year period 1935 to 1939 than in the period prior to 1935.

If it be contended that since the plant is already built, return and annual depreciation might be ignored on the theory that the plant had some value in operation until such time as it was abandoned, such a theory would certainly be untenable when the cost of power produced, *excluding annual depreciation and return,* is greater than the cost of purchased power. In years when such cost of production was less than the cost of purchased power, depreciation and return would have to be considered in determining value. Under the conditions existing during most of the period from 1935 to 1939 the plant was practically valueless from an economical operating standpoint.

Mr. Carr estimated that the water available at the Burt plant would be 207 cubic feet per second, obtained from the following sources:

1. The normal flow of Eighteen Mile creek, which includes some spillage from the Barge canal;

2. 10 cubic feet per second of water which flows from the Barge canal through a hole in the plug used to stop the 275 cubic feet per second formerly diverted;

3. Water obtained from the Barge canal to dilute the effluent from the newly constructed sewage disposal plant at Lockport;

4. 8½ cubic feet per second of sewage from Lockport's new sewage disposal plant.

There was an outlet in the Barge canal which permitted the diversion of 275 cubic feet per second of treaty water. This outlet was plugged in 1928 when the Lockport and Newfane Company and others relinquished their rights to Niagara treaty waters. Later a hole was made in this plug to permit 10 cubic feet per second of Barge canal water to flow into Eighteen Mile creek (*supra*). This was done to improve sanitary conditions along the creek. Lockport and Newfane Company has no assurance that this 10 cubic feet per second of water will continue to be available.

The city of Lockport obtained a revocable permit to divert from 75 cubic feet per second to 125 cubic feet per second of water from the Barge canal to dilute the effluent from its newly constructed sewage disposal plant. The sewage disposal plant discharges about 8½ cubic feet per second of sewage into the creek. The city is obligated to pay 40 cents per average cubic feet per second per month to the state for the water used as a diluent. When Mr. J. G. Niland, commissioner of public works of the city of Lockport, testified in June, 1941, the city was only taking 50 cubic feet per second although it could at that time take 125 cubic feet per second under the permit. Lockport & Newfane Company has no assurance that the city will ever take as much water as provided for in the permit and which was used by Mr. Carr in his computations. Nor does the company have any assurance that the state will not revoke the permit. It is possible that the city might provide for complete sewage treatment and then the necessity for this diversion would cease.

However, assuming for the moment that Mr. Carr is correct in his estimate of an average flow of 207 cubic

feet per second of water available at the Burt plant, let us see what he does with it. By taking into account pondage and the head, he comes to the conclusion that 1,730 kilowatts of firm power can be generated with an annual energy of 5 million kilowatt hours. This is an amazing estimate when we consider that the same witness in 1928 estimated that with the same dam, same pondage, same power plant, and same head the company could only produce 1,160 kilowatts from 275 cubic feet per second of treaty water. This figure of 1,160 kilowatts was used in determining the amount which The Niagara Falls Power Company should pay the Lockport & Newfane Company for its claimed diversion rights.

In computing his available firm generating capacity, Mr. Carr assumed that there would be a peak capacity for four and one-half to five hours each day for every day in the year except when the canal might be emptied. Notwithstanding the short period each day, Mr. Carr contended that it was firm power. He did not show that his peak would be coincident with the Niagara Hudson System peak demand.

This testimony was given in 1941. The company's operations in 1941 and 1942 do not even approach Mr. Carr's estimate. At the June 4, 1943, hearing in this case the annual reports for 1941 and 1942 were received in evidence. The reports for 1925 to 1940 inclusive had been previously received. These reports show recent generation at the Burt plant as follows:

1940	1,530,900	kw. hr.
1941	1,472,000	" "
1942	2,498,600	" "

Thus it is seen that the actual generation at the Burt plant in 1942 when there was a great demand for power all over the country and every generating plant was being crowded to its utmost, was slightly less than half of Mr. Carr's estimate of 5 million kilowatt hours per year.

These reports also show the cost of producing power at the Burt plant, exclusive of annual depreciation and return and the cost of purchased power, as follows:

[12]

TABLE IV

Comparison of Power Purchased and Produced, 1940 to 1942

	Produced at Burt Plant —cents per kw. hr.	Purchased —cents per kw. hr.
1940	0.94¢	1.00¢
1941	1.09	0.97
1942	0.64	0.98
Average 1940–1942	0.89¢	0.98¢
Average 1941–1942	0.87	0.98

From the above it appears that the Burt plant produced energy for less than the cost of purchased power in 1940 and in 1942, and at a greater cost in 1941. The average cost of energy produced from 1935 to 1942 inclusive (excluding annual depreciation and return upon investment) was 1.042 cents per kilowatt hour. The cost of purchased energy during the same period was 1.037 cents per kilowatt hour.

It should be borne in mind that the power produced at the Burt plant cannot be considered firm power. The record shows that there were fifteen different periods between July, 1936, and October, 1940, during which no power was produced at this plant. These periods of no generation varied from four to twenty-one days. The

record also shows that there were fifteen periods between January 1, 1936, and September 15, 1940, when the maximum load carried by the Burt plant did not exceed 300 kilowatts. Under these circumstances, the power produced at the Burt plant cannot be considered firm power and is not worth as much to the Lockport & Newfane Company as its purchased power which is firm power.

Although it does not appear that in 1940 and 1942 the company produced energy more cheaply than in any of the preceding years, it cannot be said that the saving in this power as against the cost of purchased power for only two years warrants the conclusion that the Burt plant is used and useful particularly when it is considered that on an eight year average the cost of purchased firm power is less than the cost of produced dump power.

Reserve of $485,150

Mr. Halkin testified that on June 3, 1926, the New York Water Power Commission issued a license to the Lockport & Newfane Mill Owners' Association and others, including the Lockport & Newfane Power and Water Supply Company. On December 13, 1926, the Federal Power Commission issued a license to the same association and others, including this company. On June 20, 1928, the Federal license for this project, which was designated as Project No. 15, was surrendered. In connection with the surrender of this license the Lockport & Newfane Power and Water Supply Company received, in 1931, $485,150 from the Niagara Falls Power Company, an affiliated company. This amount is now carried by the comany as a special reserve, under "Other Reserves."

Mr. Halkin quoted from a letter dated July 13, 1939, from the assistant treasurer of the Lockport & Newfane Company to the secretary of the Public Service Commission, as follows:

"The purpose of the special reserve is to set aside the amount received from the Niagara Falls Power Company for the rights of this company in respect of the use of waters licensed by the Federal Power Commission to this company and others by license dated December 13, 1926, pending a revaluation of the Burt plant on the basis of conditions obtaining since said transfer."

Conclusion on Use and Usefulness of Burt Plant

[13–16] The sale and transfer (never approved by the Commission) of the rights of the use of 275 cubic feet per second of licensed water diversion to Niagara Falls Power Company in 1928 greatly reduced the operating value of the Burt plant, if in fact it did not actually destroy such value. However, it happened that the great, almost unprecedented demand for power which has resulted from the war effort, especially in the last two years, has required the use of every generating plant, including the Burt plant. Although in the long run the use and usefulness of this plant is questionable, it can hardly be said that it is not used and useful at the present time. For the present it should be permitted to remain in Electric Plant in Service.

We have found herein that the original cost of the Burt plant is $475,038.19. This is less than the Lock-

port & Newfane Company received for the sale and transfer of the 275 cubic feet per second water rights, which was $485,150. This latter amount is now being held in a special reserve against the Burt plant, and the Lockport & Newfane Company should continue to so hold it until further order of the Commission. In the meantime no depreciation on the Burt plant should be charged to operating expenses, since this reserve is more than sufficient to care for all depreciation in the entire plant.

Under ruling of the Commission and the provision of the Uniform System of Accounts, Electric Plant in Service may include the original cost of units of property which are partially used and useful in utility operations, when the portion which is so used and useful is not separable from that which is not used and useful. When a rate question is involved and it becomes necessary to determine as of some future date the original cost of the used and useful property, there must be determined what portion of such property is to be considered as used and useful; but until that question arises all property which is partially used and useful and is not separable, may be included in the account. Further, it may be that some of the property which is now used and useful may at some future time become wholly or partially not used and useful. If such is the case and a rate question is involved, there again must be determined what portion of the property is to be considered as used and useful.

Accrued Depreciation

The scope of this proceeding included the determination of the depreciation existing in the property of the Lockport & Newfane Company. However, no evidence was presented either by the company or by the Commission's staff on this subject. Therefore no recommendation as to adjustment of the company's reserve for depreciation is made. It is to be understood, however, that this does not indicate the Commission's approval of the company's depreciation reserve at January 1, 1938, as being adequate.

Summary and Recommendations

Summarizing the foregoing, the following findings are made and adjustments to give effect to them are recommended, all as of January 1, 1938.

Of the Thompson charges of $17,500 now (January 1, 1938) included in Account 106, Unclassified Electric Plant, $2,500 is found to be a proper charge to Account 301, Organization, and $2,500 to Account 151, Capital Stock Expense. The balance of $12,500 should be charged to Account 271, Earned Surplus.

The amount of $11,332.88 representing surviving percentage overheads now recorded in Account 106, Unclassified Electric Plant, is not a proper charge to used and useful electric plant and should be charged to Account 105, Electric Plant Acquisition Adjustments.

The amount of $574,979.68 shown on the company's books in Account 106, Unclassified Electric Plant, for the Burt plant property, includes a write-up of plant land of $99,941.49, which should be charged to Account 271, Earned Surplus. The balance of the amount on the company's books

for this plant, or $475,038.19, is found to represent the original cost thereof and should be recorded in Account 101, Electric Plant in Service.

Although the Burt hydroelectric plant was practically valueless from an economical operating standpoint during recent years, it has been substantially used during the past two or three war years. No finding is made at this time as to its future usefulness. The special reserve of $485,150 should, however, be earmarked in a separate subaccount of Account 258, Other Reserves, designated "Reserve for Depreciation of Burt Plant," until further order of this Commission.

The flume at Lockport associated with the Burt plant is recorded on the company's books in Account 106, Unclassified Electric Plant, at $2,804.63. This flume is no longer of any substantial use to the company, although it still exists. It is recommended that it be recorded in Account 101, at the nominal amount of $1 and that the balance of $2,803.63 be charged to Account 271, Earned Surplus.

A small amount of $68.60 now recorded in Account 106, Unclassified Electric Plant, should be charged to Account 151, Capital Stock Expense. Account 271, Earned Surplus, should be debited with $7,809.54 and Account 106, Unclassified Electric Plant, credited with the same amount, being the adjustment of the amount previously shown on the company's books in the account "Organization."

The original cost of electric plant in service, Account 101, is found to be $1,080,798.96 as of January 1, 1938, and should be so recorded, subject to the reservations above noted relating to the Burt plant.

To correct the over-retirements in the account "Reserve for Depreciation" this account should be credited and the Unclassified Plant charged with $5,749.77.

No finding is made at this time as to the adequacy of the depreciation reserve on the books of the company as of January 1, 1938.

An order containing journal entries to give effect to these recommendations is submitted for adoption.

MICHIGAN PUBLIC SERVICE COMMISSION

Re Consumers Power Company

D-2916
May 4, 1944

PETITION *for approval of temporary suspension of certain demand provisions in industrial power rates by reason of transition from war emergency conditions; granted.*

Rates, § 345 — Electric — Industrial — Modification of demand provision — Transition from war period.

Industrial power rates based upon monthly demands in kilovolt amperes

attained by customers, with a provision that such demand shall not be less than 60 per cent of the highest billing demand of the preceding twelve months, should be modified in a period preliminary to a transition from war production to peacetime production, in order to avoid substantial hardship which would result from strict application of the 60 per cent provision, by permitting suspension of the 60 per cent provision on sixty days' advance notice, and by permitting cancellation of service contracts on sixty days' advance notice during a reasonable period approved by the Commission.

By the COMMISSION: On April 27, 1944, Consumers Power Company filed with this Commission a petition representing that it desires to modify certain demand provisions of its industrial electric rates in order to make the transition from war production to peacetime production easier of achievement.

It is shown that about 300 industrial customers, now engaged in essential war work, are taking electric service on its rates Nos. 14, 15, and 16; that, while some of these industries are distinctly new industries for manufacturing war products and whose operations after the termination of hostilities are very uncertain, the major portion of these industries represents manufacturing establishments which existed long before the present war, and which, after its termination, will reconvert their business to their former lines of peacetime activities.

It is also represented that it is believed that certain of the petitioner's industrial customers may discontinue their operations and close down entirely when the demand for their war products ceases; that others will for a time greatly curtail their operations and then resume their normal requirements for power supply; while still others will probably be little affected as to their power needs by the transition from a war to peacetime status.

It was further shown that the demand charges in the above-mentioned industrial power rates are based upon the monthly demand in kilovolt amperes attained by the customers and with the additional provision that such demand shall not be less than 60 per cent of the highest billing demand of the preceding twelve months. The customers served under these electric rates are also subject to the terms and provisions of standard service contracts having fixed terms as to their duration, which contracts are cancelable other than by mutual consent only at certain fixed intervals.

It is further represented that, on account of the uncertainties and emergency conditions resulting from the war, it is believed and substantial hardship will result from a strict application of the foregoing 60 per cent provision in these rates. In other cases, hardship will result unless customers who close down entirely and, therefore, have no further use for electric service under any of said industrial rates are, after a reasonable notice, permitted to cancel their term contracts.

It is now proposed to suspend the 60 per cent provision in the above rates for the period from May 1, 1944, to May 1, 1945, on sixty days' advance notice by the customers. At the end of the suspension period, these customers will be treated as new customers with service initiated May 1, 1945,

and the future charges will not be affected by any previous demand incurred. It is also proposed to permit customers on these rates to cancel their service contracts entirely on sixty days' advance notice.

It is also recognized by the petitioner that the emergency conditions referred to herein may not have wholly ceased by May 1, 1945, but that it does not seem advisable to make provision beyond that date. However, the petitioner intends to review again all the pertinent factors prior to May 1, 1945, and to take such action at that time, with the approval of this Commission, as may then appear reasonable.

It is also to be noted that the Industrial Power Service Rate No. 17 is of the same type as rates 14, 15, and 16. However, there is but one customer on this rate, and the special contract with him gives fully as much protection as offered by the suspension of the 60 per cent clause, and for that reason Rate No. 17 is not included in this order.

After careful consideration of this matter, the Commission finds that the proposed changes will be beneficial to the general public and should be approved.

Now, therefore, it is hereby *ordered* by the Michigan Public Service Commission that the following supplement, M.P.S.C. No. 3–Electric, of the Consumers Power Company, be, and the same is, hereby approved, effective for the period May 1, 1944, to May 1, 1945:

"During the period from May 1, 1944, until May 1, 1945, any electric customer who, on the effective date hereof, is being served under Rates Nos. 14, 15, or 16 and desires to continue to be served thereunder, may, upon sixty days' written notice to the company, suspend, in that section of the above rates entitled 'Determination of Billing Demand,' the provisions that the monthly billing demand shall not be less than 60 per cent of the highest billing demand of the preceding twelve months. In no case, however, shall the customer's monthly billing demand be less than 50 kilovolt amperes under Rate 14, or less than 50 kilowatts under Rate 15, or less than 100 kilovolt amperes under Rate 16. Nor, where breakdown (i.e., auxiliary or standby) service is furnished, shall it be less than that provided for in the service contract.

"If a customer under Rate 14 has heretofore guaranteed a billing demand of 2,500 kilovolt amperes or more and has been billed at the average of the four weekly maximum demands, and if suspension of the 60 per cent provision reduces his billing demand to less than 2,500 kilovolt amperes, then, in such case, the monthly billing demand shall be the greatest average load in kilovolt amperes during any 15-minute period during the month in which the billing demand shall be less than 2,500 kilovolt amperes.

"Nothing herein shall affect the billing of customers served under the section of Rates Nos. 14 and 15, entitled 'Modification of Sixty Per Cent Clause for Seasonal Demands.'

"Temporary suspension of the 60 per cent provision aforesaid as to said three rates, if elected by any customer, shall cease May 1, 1945, and the 60 per cent provision shall thereupon become effective, and the determination

of a customer's billing demand shall thereafter be as provided in said Rates 14, 15, and 16, but without regard to billing demands created prior to May 1, 1945.

"Any customer who, on the effective date hereof, is being served under said Rates 14, 15, or 16, and does not desire to continue to be served thereunder will, upon sixty days' written notice given to the company prior to May 1, 1945, be permitted, without the payment of damages or other penalty, to cancel his service contract; if electric service upon some other rate may be desired thereafter, said customer will be served and billed under the particular rate appropriate to the character of the service to be furnished."

It is *further ordered* that Consumers Power Company shall promptly amend its rate schedule, now on file with this Commission, in conformity with this order and Commission's Order D–3096 governing the filing of such schedules.

It is *further ordered* that the approval herein given is without prejudice to the power of the Commission at any time on its own motion or on the petition of any interested party to inquire into and investigate the rates, charges, practices, and services hereby approved.

The Commission retains jurisdiction of the matters herein contained and reserves the right to issue such further order or orders as the circumstances may require.

ILLINOIS COMMERCE COMMISSION

Re Illinois Iowa Power Company (now Illinois Power Company)

No. 29913
May 23, 1944

APPLICATION *by gas company for authority to change type and heating value of gas and for approval of revised price schedules; granted in modified form.*

Service, § 332 — Gas — Manufactured or natural — Changes when supply uncertain.

1. A gas company operating in territory where the presently available supply of natural gas is approaching depletion and there is uncertainty as to future gas supply may reasonably be permitted to furnish either straight manufactured gas or natural gas in one or all of the communities in the area, or to furnish a mixture of natural and manufactured gas in so far as such mixture can reasonably be utilized in customers' appliances, p. 157.

Rates, § 379 — Gas — Manufactured and natural — Therm basis.

2. A gas company which is permitted, because of the uncertainty of natural

gas supply, to furnish either manufactured gas, natural gas, or mixed gas should make effective, in addition to present natural gas rates, rates for manufactured gas converted from a cubic foot basis to a therm basis, p. 157.

Rates, § 376 — Gas — Application — Natural gas and artificial gas.

3. Rates for natural gas established by a company which, because of the uncertainty of natural gas supply, is permitted to change from natural gas service to manufactured gas service and from manufactured gas service to natural gas service as conditions warrant, should be applied when the proportion of natural gas to the total gas supplied in the area is 50 per cent or greater, and artificial gas rates should be applied when the proportion of natural gas is less than 50 per cent of the total, p. 157.

Rates, § 243 — Gas — Artificial and natural — Notice of changes.

4. A gas company which is authorized, because of an uncertain natural gas supply, to make changes from natural gas to manufactured gas and from manufactured gas to natural gas, as conditions warrant, should, in the application of rates for the different kinds of service, give immediate notice to customers and to the Commission of the type of gas service being supplied in the area or upon which the rate is based whenever a change is made in the type of gas or from one rate to the other, p. 157.

Service, § 337 — Gas — Heating value.

5. A heating value content of 1,600 BTU per cubic foot for manufactured propane-air gas was approved in the case of a company authorized, because of the uncertainty of natural gas supply, to change from time to time between natural gas service and manufactured gas service, p. 157.

Service, § 333 — Gas — Adjustment of appliances — Change of gas type.

6. A gas company authorized to use either natural gas or artificial gas as conditions may warrant should, when necessary because of a change in heating value standards, be required at its own expense to make such adjustments to customers' gas burning appliances as may be necessary, p. 157.

By the COMMISSION: On August 13, 1941, the Commission issued its order in this proceeding by which among other things it authorized the Illinois Iowa Power Company, now the Illinois Power Company, to furnish natural gas with a heating value of 1,700 BTU per cubic foot instead of manufactured gas with a heating value of 565 BTU per cubic foot in the territory set forth in the title. At the same time the company was authorized to file certain rates applicable to service with natural gas. These rates were upon a therm basis whereas the rates for manufactured gas were on a cubic foot basis.

Pursuant to the above order natural gas service was instituted in that territory. It was found however that the heating value content of the natural gas then delivered to customers varied from the standard prescribed in the Commission's order. This variation was due to certain operations in refineries over which the petitioner had no control in connection with the extraction of additional hydrocarbons to be used in the enrichment of gasoline for the war effort. This situa-

tion was brought before the Commission by supplemental petition, and the Commission on January 5, 1943, issued its first supplemental order in the case. This order authorized the petitioner to change the heating value of the gas from 1,700 BTU to 1,650 BTU and also from time to time "to adopt other standard heating values for the gas delivered in the aforementioned communities if and when it is found justified under its gas purchase contract, providing corresponding changes are made in the billing." Provisions were also made for notice to the Commission and for adjustments of customers' appliances where necessary.

On April 21, 1944, the petitioner, its name having now been changed from the Illinois Iowa Power Company to the Illinois Power Company, filed its second supplemental application in which, after reciting the proceedings as above outlined, alleged that recently a rapid decline in gas and oil production in the Salem field has taken place and that, by reason of such depletion, the gas supply from the field has become inadequate and that in order to protect the service to its customers the petitioner has found it necessary to construct and operate certain temporary facilities for the production of manufactured gas and has served manufactured gas containing approximately 1,600 BTU per cubic foot in part of its territory since March 28, 1944. The petitioner further alleges that in order to provide an uninterrupted supply of gas in the said communities and to permit the use and distribution of natural gas so long as a usable supply is available, to avoid the necessity of readjusting customers' gas appliances and to be prepared to revert to the distribution of straight natural gas if and when at some later date a new supply of natural gas should become available, petitioner proposes to install and maintain permanent manufactured gas plants equipped to produce manufactured gas containing 1,600 BTU per cubic foot, one of these plants to be located at Centralia and the other at Mt. Vernon, the aggregate cost of which will be approximately $40,000.

The present proposal of the petitioner, made in view of the situation and the contemplated construction of two permanent manufactured gas plants as aforesaid, is in effect that petitioner be permitted to supply natural gas or a workable mixture of natural and manufactured gas as long as natural gas is available and to do so under the present applicable natural gas rates, but that, if sufficient natural gas is not available then the petitioner proposes to furnish manufactured gas. The manufactured gas however would be supplied at a higher heating value (1,600 BTU) than the gas supplied prior to the order of August 13, 1941 (565 BTU). This gas, initially at least, would be of the type known as manufactured propane-air gas, the heating value of which is proposed to be maintained at 1,600 BTU per cubic foot subject to the usual allowable tolerance of 5 per cent above or below the standard. With respect to rates the petitioner proposes to continue to charge its customers a uniform rate for gas service throughout this entire territory and these rates will be either the present rates for natural gas service or the rates for manufactured gas service as now on file (being the rates in effect prior to the change-over to

natural gas) but converted from a cubic foot basis to a therm basis. The reason for this conversion is the obvious fact that a proper rate for the furnishing of 565 BTU gas on a cubic foot basis would not be a proper rate for the furnishing of 1,600 BTU gas on the same basis. In view of the exigencies of this case and in order to permit advantage to be taken of the supply of natural gas as long as available, the petitioner proposes that it be granted permission, somewhat unusual, to change from natural or mixed gas to manufactured gas from time to time, as the available supply of natural gas may warrant, and to bill its customers on the rate applicable to the type of gas and heating value content actually furnished.

It is also proposed that a point of division be established on the following basis, namely, that where 50 per cent or more of the gas furnished in the entire service area is natural gas then the natural gas rates will be applied throughout the entire area but that where less than 50 per cent of the gas is natural gas then the manufactured gas rates will be applied throughout the entire area.

On May 3, 1944, pursuant to due notice, a hearing was held upon the aforesaid second supplemental application at the offices of the Commission in Springfield. At the said hearing the petitioner and the cities of Mt. Vernon and Centralia were each represented. The city attorney of the city of Centralia made for the record a statement in which he objected to the higher level of rates proposed for manufactured gas service as compared with the rates for natural gas service and invited attention to the fact that customers now using natural gas for space heating would be in a critical position if the cost of space-heating service by manufactured gas were unduly high and under present conditions of war emergency many of these customers would be unable to convert their heating apparatus for the use of some other fuel. In the course of further proceedings in the case this matter was more fully developed, and in the present order provisions will be made for the situation of space-heating customers thus pointed out by counsel.

[1–6] The problem presented in this case is a practical one and, if advantage is to be taken of the apparently dwindling supply of natural gas and still the service to the customers maintained with proper reliability and efficiency, then some unusual arrangements must be made. Obviously the supply of manufactured gas from the new plants proposed to be built will be much more reliable than the present uncertain supplies of natural gas and moreover the gas so supplied from these new plants can be maintained much more closely to standards of heating value and purity than is practical with the present supply of natural gas. The primary object must be the rendition of good service to the public and the provisions for the construction of new gas manufacturing plants appear to be steps in this right direction. Manufactured gas however costs more to furnish than natural gas, at least under the circumstances here present, and therefore, while obviously the manufactured gas service should be made available where the supply of natural gas has become uncertain, it still is desirable to take as much ad-

vantage as possible from the present natural gas supply and to make provision for the utilization of natural gas when and if any new supply does become available.

In the light of all these circumstances it appears that the arrangement hereinafter provided, while an unusual one, is the most practical way of protecting the interests of the public both in respect to reliability and efficiency of service and in respect to economy.

The proposal of the company did not make adequate provision for space-heating customers who, under present conditions at least, might find it very difficult to convert their premises and equipment for the use of other fuel. The manufactured gas rates as originally proposed herein by petitioner would have increased the cost of space heating to what may be regarded as a prohibitive figure. These manufactured gas rates, moreover, would require the use of a separate meter for the gas consumed in space-heating, as distinct from the gas used for other purposes. To avoid this hardship to a group of customers, and to permit all gas furnished domestic customers to be supplied through a single meter, the Commission will require the filing of a rate for combination residential service and commercial space-heating service in order to prevent hardship to these customers. With this modification the proposal of the petitioner appears generally reasonable and in the interest of best service to the public and the order will provide accordingly.

The Commission, having considered the aforesaid second supplemental petition, the evidence introduced in connection therewith, the statements of counsel, having given further consideration to all of the record thus far made in this proceeding, and being fully advised in the premises, is of the opinion and finds (these findings being in addition to the findings made in orders heretofore entered in this proceeding, to which reference is hereby made):

(1) that petitioner for a number of years had furnished manufactured gas service in a service area comprising the communities of Centralia, Central City, Wamac, Finney Heights, and Mt. Vernon, Illinois, said manufactured gas having a heating value of approximately 565 BTU per cubic foot;

(2) that in August, 1941, petitioner was authorized by this Commission to change the type of gas from manufactured to natural gas and to increase the heating value of the gas so supplied from 565 BTU to approximately 1,700 BTU, said heating value standard to continue in effect unless otherwise ordered by this Commission; the supply of natural gas so delivered to be procured from oil fields in the vicinity of Salem, Illinois;

(3) that subsequent to the aforesaid authority to change the type and heating value of the gas and by reason of change made in processing of natural gas by the gasoline refineries in the Salem area, over which petitioner had no control, petitioner was granted authority to vary the heating value standard in accordance with the actual heating value of the natural gas delivered, provided such change in heating value was properly made a factor in the computation of customers' bills;

(4) that when natural gas was so introduced, petitioner was authorized

to place in effect revised price schedules for natural gas service which were a material reduction from the price schedules then in effect for manufactured gas; that the petitioner was permitted to and did keep in effect the price schedules for manufactured gas theretofore on file and in effect so that they would be available in the event that it became necessary to return to the distribution of manufactured gas; that the rate files of this Commission show that said rates for manufactured gas service in this service area have so been continued in force and effect;

(5) that, pursuant to said orders, petitioner has since furnished natural gas from this field in said communities, until recently when a rapid decline in gas and oil production in this field has taken place; that by reason of such depletion the gas supply from this field has become inadequate, and petitioner has provided temporary facilities for the production of manufactured gas for service in said communities and, during the month of April, 1944, in order to protect the gas service to its customers, petitioner has operated such temporary facilities, and has served manufactured gas containing approximately 1,600 BTU per cubic foot, in part of this territory;

(6) that while the presently available supply of natural gas is approaching depletion there is a possibility of obtaining a supply of natural gas in the future from other sources and petitioner seeks authority to interchange manufactured or natural gas according to availability or nonavailability of an adequate natural gas supply, and to charge rates applying to the type of gas service so furnished, according to the method of determination hereinafter set forth;

(7) that in order to conserve and utilize such supplies of natural gas as may be available from time to time in sufficient quantities to be used feasibly, and to enable the public to have the advantage where possible of the lower rates for natural gas service it is reasonable that petitioner be permitted to furnish either straight manufactured gas or natural gas in one or all of the communities in the aforesaid area, or to furnish a mixture of natural and manufactured gas in so far as such mixture can reasonably be utilized in customers' appliances;

(8) that it is reasonable that petitioner be permitted to keep on file and effective its present rates for natural gas service in this area and to file rates for manufactured gas service which shall be substantially the equivalent and no higher than the rates now in effect for manufactured gas service, but converted from a cubic foot basis to a therm basis but with certain reductions below the rates proposed by the company in this proceeding, and with the addition of a combination rate for residential and commercial space heating as hereinafter set forth;

(9) that the said rates should be applied to the service of customers in the following manner, namely, that when the proportion of natural gas to the total gas supplied in the area is 50 per cent or greater, then the natural gas rates shall be applied, but that when the said proportion of natural gas is less than 50 per cent of the total then the manufactured gas rates shall apply, and that in said application of rates the entire service area should be treated as a unit and a uniform rate,

in accordance with the foregoing, should be applied throughout the entire service area. The foregoing percentages are to be determined upon the basis of the thermal content of the gases;

(10) that in said application of rates the petitioner should give immediate notice to its customers and to the Commission of the type of gas service being supplied in the area or upon which the rate is based whenever a change is made in the type of gas or from one rate to the other;

(11) that the properties of the manufactured gas proposed to be furnished as aforesaid by petitioner are such that with a heating-value content of 1,600 BTU per cubic foot the said gas may now be consumed efficiently in customers' appliances which are adjusted for natural gas having a heating-value content of 1,400 BTU per cubic foot, and that the establishment of a heating-value content of 1,600 BTU per cubic foot for said manufactured propane-air gas will avoid unnecessary expense and inconvenience in adjusting customers' appliances, will permit said manufactured gas and present natural gas to be used interchangeably and that said heating value standard should be authorized;

(12) that the conversion of the present manufactured gas rates from a cubic foot basis to a therm basis will not of itself result in the increase of any customer's bills but on the contrary will result in slight decreases by reason of the necessity of selecting practical units in terms of therms and the said conversion of rates will facilitate the computation of bills for gases of different heating value where either natural gas, manufactured gas, or a mixed gas might be furnished as hereinbefore set forth;

(13) that the rates originally proposed by the petitioner for service when manufactured gas is the basis of billing are as follows:

General Service Schedule

First 15 therms per month @ 30¢ per therm
Next 15 therms per month @ 19¢ per therm
Next 110 therms per month @ 16¢ per therm
Over 140 therms per month @ 13¢ per therm
Minimum monthly charge 75¢

Space-heating Schedule

For all gas used per month @ 13¢ per therm
Minimum charge for heating season $100 net

(14) that a reasonable schedule of rates representing a conversion from the cubic foot basis to the therm basis for manufactured gas service suitable also for residential and commercial space heating service, is the rate set forth below and that the Illinois Power Company should be permitted to file and make the said rate effective as of June 15, 1944:

Combination Residential Service and Commercial Space Heating Service

First 10 therms per month @ 30¢ per therm net
Next 15 therms per month @ 17¢ per therm net
Over 25 therms per month @ 8¢ per therm
Minimum monthly charge 75¢

Commercial Service

First 10 therms per month @ 30¢ per therm
Next 65 therms per month @ 17¢ per therm
Next 125 therms per month @ 15¢ per therm
Next 300 therms per month @ 13¢ per therm
Over 500 therms per month @ 12¢ per therm
Minimum monthly charge 75¢

(15) that when and if it shall become necessary for efficient utilization of the gas furnished to customers in the said service area, by reason of changes in the heating-value standard of the gas furnished, then the said Illinois Power Company should be required at its own expense to make such adjustments in customers' gas burning appliances as may be necessary to

enable such appliances efficiently to utilize the gas so furnished; and

(16) that the Illinois Power Company should be required to give notice to the public of the changes authorized by this order by making publication in newspapers of general circulation, one such publication being in a newspaper published in Mt. Vernon and the other in a newspaper published in Centralia, and that the said notice shall be inserted in at least two issues of each said paper; the said notice shall be worded as follows:

Special Notice
to
Gas Customers

To assure the continuance of reliable gas service here—even though the supply of natural gas fluctuates or becomes entirely unavailable—this company has been authorized by order of the Illinois Commerce Commission to provide its customers with either natural gas or manufactured gas.

Since the supply of natural gas has become restricted, we have installed temporary gas manufacturing facilities. Two new gas manufacturing plants will be constructed, one at Centralia and one at Mt. Vernon, capable of meeting all gas needs.

The order of the Commission provides that as long as 50 per cent or more of the gas furnished in this area is natural gas—the present natural gas rates will prevail. When less than 50 per cent is natural gas—certain new manufactured gas rates set forth in the order, will be applied.

These *new* manufactured gas rates, expressed in terms of therms, represent a reduction from the *old* manufactured gas rates—which were in force prior to the introduction of natural gas in 1941, and which have remained on file.

Information as to the new rates and any other matters concerning this change may be obtained from the Illinois Commerce Commission at Springfield—or from our local offices.

ILLINOIS POWER COMPANY.

It is therefore *ordered* that the Illinois Power Company be and it is hereby authorized to file and make effective as of June 15, 1944 (the actual application of the said rates being subject to the conditions hereinafter set forth) a schedule of rates for manufactured gas service in the territory here involved as set forth in finding (14).

It is *further ordered* that the said Illinois Power Company be and it is hereby authorized to continue the furnishing of natural gas service to its customers in the area here involved in accordance with orders heretofore issued in this proceeding and in accordance with the requirements of said orders with respect to heating value content, or that the said Illinois Power Company may at its option furnish in the said territory either straight natural gas, manufactured gas, or a mixture of manufactured and natural gas, and that if manufactured or mixed gas is so furnished then that gas shall have a heating value content of 1,600 BTU per cubic foot, subject to the tolerance of 5 per cent in each direction from said standard.

It is *further ordered* that the rates to be charged by the petitioner to its customers for either natural gas service or for manufactured or mixed gas service in this area shall be determined

in the manner set forth in finding (9) of this order, and that if natural gas service is supplied in accordance with finding (9) then the rates shall be the rates now on file for said natural gas service, but that if rates for manufactured or mixed gas are applied in accordance with said finding (9) then the rates shall be those set forth in finding (14) of this order.

It is *further ordered* that the Illinois Power Company shall give notice to the public by newspaper publication of the changes authorized by this order in the manner set forth in finding (16) herein.

It is *further ordered* that when and if it becomes necessary to adjust the appliances of customers in the said territory by reason of changes in the heating value content of the gas furnished, then the said Illinois Power Company shall make such adjustments at its own expense.

It is *further ordered* that the Commission expressly retain jurisdiction of the subject matter and parties for the purpose of issuing any further order or orders or taking any further action with respect to the subject matter which may appear at any time appropriate or necessary.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

City of Pittsburgh

v.

Duquesne Light Company

Complaint Docket No. 13683
May 22, 1944

PROCEEDING *to require electric utility to file optional rates for electric service to bridges and highway projects in a city; complaint dismissed.*

Rates, § 254 — Optional schedules — Conjectural service conditions — Highway at bridge lighting.

An electric company providing a complete street lighting service whereunder the company owns and maintains all electrical facilities should not be required to file optional rates providing for street lighting service whereunder a municipality reserves the right to install and own electrical facilities, with or without maintenance, on bridges and highway projects, in order that the municipality may determine and choose whether or not it will acquire such facilities and thus put itself in a position to take service under one of the optional rates.

Rates, § 81 — Powers of Commission — Optional rates.

Statement that the Pennsylvania Commission has jurisdiction to prescribe

optional rates for an electric utility in any proper proceeding if such prescription appears essential to proper protection of the consuming public or any member thereof, p. 164.

Discrimination, § 14 — Rates — Similar conditions.

Discussion of discrimination which would result if an electric utility sold energy to a county for bridge lighting under certain rates where the county owns and maintains electrical facilities, if the utility should refuse to render similar service to a municipality owning and maintaining electrical facilities, p. 164.

(BUCHANAN, Commissioner, dissents in separate opinion.)

BY THE COMMISSION: The city of Pittsburgh initiated this proceeding by petition dated February 13, 1942, asking that respondent, Duquesne Light Company, be required to file certain optional rates for electric service to bridges and highway projects in the city of Pittsburgh. After various procedural steps (including our orders of August 17, 1943, 50 PUR(NS) 192, and October 4, 1943) an amended petition for Establishment of Rate was filed by the city, dated January 5, 1944; respondent filed an answer, and evidence was taken at a public hearing. Briefs have been submitted, and oral argument has been heard.

Since the precise objective of the complaint has been the subject of considerable controversy, clarity will be gained by quoting the summary statement of the city's position contained in its brief:

"The purpose of the present proceeding is to gain for the city the optional right to install, own, and/or maintain *electrical* facilities (cable, transformers, fixtures, and lamps) on bridges and special highway projects on which it now owns or may in future own the structural facilities (ducts, junction boxes, poles, and brackets), with resultant savings in street lighting costs (R 36, 37). As shown on Exhibit No. 2, the city owns the structural street lighting facilities on numerous bridges and highway projects, since such structural facilities are usually constructed as integral parts of the bridge or highway project (R. 19). The city does not, however, own any street lighting *electrical* facilities (cable, transformers, fixtures, and lamps) whatever (R. 9).

"For the contract year 1941, the city drew and requested bids for three separate sets of specifications: (A) Providing for a complete street lighting service as in the past, i.e., whereunder the company owned all electrical facilities; (B) Providing for street lighting service whereunder the city reserves the right to install and own electrical facilities on bridges and special highway projects, such electrical facilities to be maintained by the company; (C) Providing for street lighting service whereunder the city reserves the right to install, own, and maintain electrical facilities on bridges and special highway projects. The Duquesne Light Company, which was of course the only bidder, submitted its bid under specifications A, i.e., for service under its rate "S" and Rider 11, and failed and refused to submit bids under specifications B or C. As a

consequence the city refused to sign annual street lighting contracts since 1941, and filed the present proceeding to force the company to establish rates providing for service under specifications B and C."

Respondent, in reply, asserts that, although it has the right to file such optional rates as it may deem proper and has availed itself of this right in the past, nevertheless the Commission cannot compel it to file any optional rate. It also contends that the optional rates sought by the city are not practical or reasonable.

Section 11 of the Act of March 31, 1937, P.L. 160 (66 PS 462) as amended, specifically provides that this Commission shall have the power and the duty to administer and enforce the Public Utility Law. Section 301 of the Public Utility Law provides that every utility rate shall be just and reasonable, and § 304 prohibits unreasonable discrimination. Sections 308 and 309 of the Public Utility Law provide for the prescription of rates by the Commission. Under these comprehensive grants of authority, we believe ourselves empowered to prescribe optional rates in any proper proceeding if such prescription appears essential to proper protection of the consuming public or any member thereof. However, in the instant case, there is no complaint concerning the reasonableness of the existing rates and hence no basis for the Commission's interference.

In addition to this, the order asked by the city is neither practical nor reasonable; it is not warranted by the facts. From the record and briefs as well as the statements of counsel at argument, it appears that respondent now renders service to certain bridge electrical facilities wholly owned and maintained by the county of Allegheny. This service is simply the sale of energy without any responsibility for maintenance of the facilities on the bridge. Under these circumstances, if the city owned similar facilities and respondent refused to render similar service thereto at corresponding rates, a case would be presented which might well fall within the category of unreasonable discrimination prohibited by § 304 of the Public Utility Law, thus invoking Commission correction of the situation.

However, that is not this case. The city of Pittsburgh admittedly does not presently own any highway or bridge electrical facilities and therefore could not take service under the optional rates even if filed. It is equally evident that the submission of bids under such optional rates would be an idle gesture on the part of respondent, since the conditions of service contemplated by the bids would not exist. The city attempts to avoid the implications of the facts by saying that it wishes to have available optional tariffs and bids submitted thereunder so that it may determine and choose whether or not it will acquire facilities and thus put itself in a position to take service under one of the optional rates. If this suggestion is reasonable, not only the city but any other consumer of respondent should have the right to evolve an indefinite number of theoretical situations and the power to force the development and filing of rates covering all of the various hypothetical alternatives. We cannot agree with this proposition. Unreasonable discrimination can exist

only as between consumers whose conditions of service are substantially the same. American Lime & Stone Co. v. Public Service Commission (1930) 100 Pa Super Ct 158. Correspondingly, we know of no instance—and petitioner points to none—where any utility has been required to file a rate covering conjectural service conditions.

For the foregoing reasons we conclude that the complaint must be dismissed; therefore,

Now, to wit, May 22, 1944, it is *ordered:* That the instant complaint be and is hereby dismissed.

The Chairman being absent did not participate in the vote on this order. Commissioner Buchanan files a dissenting opinion.

BUCHANAN, Commissioner, dissenting: Avoiding the cloud of technicalities and tearing aside the veil of confusion, the essence of this action is that the Commission has said that the judgment of the elected officials of the city of Pittsburgh as to municipal economy in street lighting "is neither practical nor reasonable; it is not warranted by the facts." Strangely under almost identical facts and circumstances the Commission has found the same thing is practical, reasonable, and warranted by the facts for special industrial customers and even for other municipalities.

The Commission has substituted its judgment for that of the city government of Pittsburgh which is the very thing it complains against in the recent decisions of the superior courts. The effect of the Commission action is that the city of Pittsburgh cannot contract for the construction of its own municipal electrical facilities with any contractor other than Duquesne Light Company. In any event, it is prohibited from owning such facilities except at the risk of a long drawn-out expensive rate case to determine the proper rates for municipally owned facilities *after* the city has made its investment in them.

With the sanction of this Commission, every large industrial concern on the lines of Duquesne Light Company is permitted to sit down and negotiate with the company as to the special rates which may be applicable to them and their special circumstances and usually some agreement is reached and a "rider" is attached to the standard rate. That, however, seems to be denied to the electorate of the city of Pittsburgh generally for the reason stated by the company representative at the oral argument, *"we don't want to do it."* To me that is no reason at all.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Pennsylvania Electric Company

Application Docket No. 62651, Securities Certificate No. 408
February 7, 1944

APPLICATION *by electric company for approval of acquisition from an affiliated company of all common capital stock and open account indebtedness of a water company, and securities certificate in the matter of issuance of common stock; approval granted.*

Consolidation, merger, and sale, § 22 — Control of water company by electric company — Necessary water power.

An electric company should be authorized to acquire a controlling interest in a water company which owns impounding, transmitting, and distributing facilities through which the electric company receives water used principally at its generating station, the volume of such water being about 84 per cent of the total distributed by the water company and payment therefor accounting for about 75 per cent of its revenues, where under the requirements of the Holding Company Act the companies might cease to be members of the same holding company system and the electric company would lose control over water facilities in which it has by far the major interest.

By the COMMISSION: We are here asked to approve the acquisition by Pennsylvania Electric Company (Electric Company) of the controlling interest of Associated Electric Company (Associated) in Penelec Water Company (Water Company) and the payment therefor of not more than 19,000 shares ($380,000 par value) of the common capital stock of Electric Company. Said controlling interest consists of all the outstanding common capital stock ($500 par value) of Water Company and $360,000 of open-account indebtedness of that company to Associated.

Control of Water Company by Electric Company is averred to be necessary so that the latter may control the impounding, transmitting, and distributing facilities through which it receives water used principally at its generating station at Seward, Westmoreland county. The volume of such water is about 84 per cent of the total distributed by Water Company, and payment therefor accounts for about 75 per cent of its revenues. The other consumers of Water Company number about 239.

Control of Water Company by Electric Company would be unnecessary if Associated, a subholding company in the Associated Gas and Electric System, were to continue, for an indefinitely long time, in control of both Electric Company and Water Company. But the A G & E system is

undergoing integration pursuant to the provisions of the Federal Holding Company Act of 1935, and retention in said system of the facilities of Water Company used in supplying water service to others than Electric Company would not conform to the integration standards of said act, as construed by the staff of the Securities and Exchange Commission. If control of Water Company, as now constituted, were to pass from the A G & E System, then Electric Company would lose all control over water facilities in which it has by far the major interest.

In an attempt to protect its interest in said water facilities in a manner consonant with the views of the staff of the Securities and Exchange Commission, Electric Company entered into an arrangement with Water Company by which it would acquire the impounding, transmitting, and distribution facilities used in furnishing water to its Seward generating station, and would sell water to Water Company for distribution to the public. The arrangement was presented to us for approval at A. 61489, but we refused approval on the grounds that dismembering the properties of Water Company in that way should not be in the public interest.

The properties of Water Company used in distributing water to the public cannot, under the laws of Pennsylvania, be acquired and operated by Electric Company, according to counsel for the latter company. Since we have refused to approve dismemberment of the water properties, it follows that the only way in which Electric Company can control the water facilities useful to it in the operation of its Seward generating station is to acquire Associated's controlling interest in Water Company, as prayed for in the instant application.

It is proposed that Electric Company acquire the controlling interest for a consideration equal to the net asset value of Water Company at the date of settlement. It is expected that the net asset value at that time, and therefore the amount of consideration, will not be in excess of $380,000. The consideration will be paid in not more than 19,000 shares of the common capital stock ($20 par per share) of Electric Company, except that a small cash payment (less than $20) may be made to avoid the issuance of a fractional share. If the transaction had been consummated as of October 31, 1943—the date of the latest available figures—the consideration would have been $353,763.06, as shown by the following computation of the net asset value of Water Company as of that date:

Assets:		
Fixed capital, including construction work in progress (averred original cost)	$421,356.66	
Less reserve for depreciation	80,156.39	
Fixed capital less reserve for depreciation	$341,200.27	
Miscellaneous special funds	19.32	
Current assets (cash, accounts receivable, materials and supplies, etc.)	19,473.60	
Unbilled water service	860.28	
Total Assets		$361,553.47
Less Liabilities and Reserves		
Accounts payable	$1,802.83	
Service billed in advance	20.00	
Taxes accrued	2,587.52	
Reserve for uncollectible consumers' accounts	2,238.94	
Other reserves	47.22	
Contributions in aid of construction	1,093.90	
Total Liabilities and Reserves		7,790.41
Net Asset Value October 31, 1943		$353,763.06

The net income of Water Company for the twelve months ended October 31, 1943, was $26,549.49, being about 7.4 per cent of the net asset value of $353,763.06 as of that date. The income account was as follows:

Operating revenue		$48,569.57
Operating revenue deductions:		
Operating expenses	$6,727.06	
Rent for leased properties	9,099.48	
Depreciation	3,433.77	
Taxes (including $1,839.99 of Federal income taxes)	2,744.14	22,004.45
Gross income		26,565.12
Income deductions:		
Interest (exclusive of interest on $360,000 of open-account debt to Associated Electric Company, which Pennsylvania Electric Company will acquire)		15.63
Net income		$26,549.49

As the major part of the property of Water Company may be considered, for all practical purposes, to be a plant facility of Electric Company, we think that control by the latter of Water Company would be in the public interest. And since the terms and conditions under which control would pass to Electric Company are unobjectionable, we shall approve A. 62651 and register S. C. 408.

The matters and things involved in the application and securities certificate before us having been duly presented, and full consideration having been given thereto, we find and determine (1) that approval, subject to appropriate conditions, of the matters and things involved in A. 62651 is necessary or proper for the service, accommodation, convenience, or safety of the public, and that a certificate of public convenience should issue evidencing approval thereof; and (2) that the issuance of securities in the amount, of the character, and for the purpose proposed in Securities Certificate No. 408 is necessary or proper for the present and probable future capital needs of Pennsylvania Electric Company, and that said securities certificate, therefore, should be registered; therefore,

Now, to wit, February 7, 1944, it is *ordered:*

1. That the acquisition by Pennsylvania Electric Company from Associated Electric Company of all the

common capital stock and certain open-account indebtedness of Penelec Water Company, as provided in a certain agreement between said Pennsylvania Electric Company and Associated Electric Company, dated October 27, 1943, be and is hereby approved, and that a certificate of public convenience issue in evidence thereof, subject to the condition that the transaction comprehended in said application be consummated within ninety days from the date hereof, and that notice of the consummation thereof be filed with the Commission within ten days thereafter.

2. That Securities Certificate No. 408 filed by Pennsylvania Electric Company with respect to the issuance of not more than 19,000 shares of its common capital stock, of the par value of $20 per share, be and is hereby registered subject to the condition that, within ten days after the issuance of shares of said common capital stock, a post-effective amendment to Securities Certificate No. 408 be filed setting forth (a) a calculation of the net asset value of Penelec Water Company as of the date of the transfer of its common stock and certain open-account indebtedness to Pennsylvania Electric Company, and (b) the number of shares of common stock of Pennsylvania Electric Company issued by it to Associated Electric Company under the provisions of said agreement between Pennsylvania Electric Company and Associated Electric Company.

Commissioner Buchanan concurs in the majority action.

KANSAS CITY (MISSOURI) COURT OF APPEALS

State ex rel. and to Use of Cirese et al.

v.

Public Service Commission of Missouri

No. 20442
— Mo App —, 178 SW(2d) 788
January 31, 1944

APPEAL *from judgment affirming Commission order requiring persons to cease and desist from distribution and sale of electrical energy in competition with public utility company; affirmed.*

Public utilities, § 16 — Tests of status — Acts.

1. Whether or not a business constitutes a public utility depends on what its operators actually do, p. 172.

Public utilities, § 21 — Charter powers — Ultra vires act.

2. A corporation actually engaged in the business of a public utility is subject to Commission regulation regardless of the limitations of its charter or its lack of public authority to operate as a public utility, p. 172.

Public utilities, § 37 — Electric plant — Production for own use and for public.

3. A corporation engaged in producing electricity not only for its own use and that of tenants of buildings owned by it, but also in the production, distribution, and sale of electricity to the public within the vicinity of its plant and distribution system, is a public utility, p. 173.

APPEARANCES: J. B. McGilvray and J. K. Owens, both of Kansas City, for appellants; John P. Randolph and Lester G. Seacat, both of Jefferson City, and Ludwick Graves, of Kansas City, for respondent.

SPERRY, Commissioner: This case reaches us on appeal from a judgment of the circuit court affirming an order of the Public Service Commission.

The case had its origin when the Kansas City Power & Light Company, a corporation, hereinafter referred to as complainant, filed a complaint before the Public Service Commission of Missouri, hereinafter referred to as respondent, wherein it was charged that Joseph C. Cirese and Mary Cirese, hereinafter referred to as appellants, were unlawfully engaged in selling electrical energy to the public in competition with complainant. It is conceded by both parties that complainant holds a certificate of public convenience and necessity issued by respondent, is authorized to sell and distribute electrical energy in Kansas City, that it is capable of, and is now rendering, satisfactory service in that field to the public in Kansas City at just and reasonable rates, and that appellants hold no license or franchise from Kansas City, nor any certificate of convenience and necessity from respondent, authorizing them to engage in business as a public utility.

Respondent held a hearing on said complaint. Both complainant and appellants appeared and presented evidence. At the conclusion of the hearing, and on November 18, 1940, respondent made certain findings, and entered the following order:

"*Ordered:* 1. That Joseph C. Cirese of Kansas City, Missouri, engaged in business as Cirese Power & Light Company, forthwith cease and desist from the distribution and sale of electrical energy and likewise cease and desist the solicitation of customers and the advertisement of power for sale.

"*Ordered:* 2. . . ."

There was substantial evidence received at the hearing tending to prove that appellants entered the electrical energy production field in 1934 when 2 gas engines and a 40-kilowatt generator were installed at 3417–21 East 9th, which equipment was used exclusively, and was sufficient, to serve certain of appellants' own buildings in that block; that they added, during that year, a 20-kilowatt generator, which addition was made necessary in order to serve a property owned by appellants and located in an adjoining block on East 9th street, to which

distribution lines were run; that in 1935 they added a 30-kilowatt unit and connected the plant with 2 other buildings owned by them and located on East 8th street; that until this time appellants were serving their own buildings, and tenants thereof, exclusively, excepting for one widow to whom no charge was made; that in August, 1937, they added a 48-kilowatt unit, making a total productive capacity of 138-kilowatts, but they took on no outside customers nor did they attach any additional buildings owned by them; that in 1938 they added an additional 170-kilovolt unit, making a total capacity of about 260 kilowatts; that at about this time they began taking on customers in addition to their own buildings and tenants until, in October, 1939, which was after complainant herein had sought injunctive relief against appellants, they had thirteen paying customers, aisde from their own buildings and tenants.

There was evidence tending to prove that, in 1938, after appellants had acquired the last-mentioned unit which materially increased their productive capacity, they made several extensions of their lines in order to connect with new customers who were then being served, or could have been served, by complainant; and that they verbally solicited business from customers then being served by complainant and held out to them, as an inducement to obtain business, that they would furnish electrical energy at rates 15 per cent less than those charged by complainant. They used and distributed to their customers and others a printed bill, virtually a duplication of the bills used by complainant as a customers' bill, wherein the same rates as are charged by the complainant are shown but which featured a 15 per cent discount thereon. There was evidence from which it may be fairly inferred that they collaborated in the preparation of, and approved the printing and distribution of, a newspaper article wherein it was stated that they were equipped to serve factories, business houses and homes and were installing meters wherever units of subscribers could be found. They advertised by handbills that they were in the power and light business, that customers could save 15 per cent on their bills by using this service, and that "We solicit your light service." There was testimony to the effect that in 1938 they sought to sell their business and equipment, including their transmission and connecting lines, to complainant for $50,000. The evidence was that Mr. Cirese stated to complainant that they had on hand 500 meters and sufficient wire to service 500 customers and desired to sell all of his plant except such equipment as was necessary to serve his own buildings and tenants. He indicated to complainant that if they did not sell they would continue operations, but that, if they could sell to complainant, they would retire from the field except that they would continue to serve their own properties and tenants.

Complainant, in 1939, obtained an injunction in the circuit court of Jackson county against appellants' further encroachment on their business; but that court order was nullified by the Supreme Court, by its writ of prohibition, in 1940. State ex rel. and to Use of Cirese v. Ridge, 345 Mo 1096,

34 PUR(NS) 454, 138 SW(2d) 1012. The instant action was instituted immediately after rendition of the above decision.

There was substantial evidence tending to prove that appellants had materially extended their transmission and connecting lines, and added a number of new customers, after trial of the circuit court case and prior to the hearing before the Commission, so that they served, at the time of the hearing, 23 members of the public. There was also evidence to the effect that appellants, at the time of the hearing, had generating capacity sufficient to produce enough power, over and above their then demand load, for the needs of 86 additional customers; that they had in stock sufficient meters, poles, and other supplies to connect 200 customers; that their distribution and connecting lines closely parallel the lines of complainant in a territory where appellants could, without undue expense, connect and serve more than 100 customers now being served by complainant; that their poles are close to and largely duplicate the poles of complainant in the area where the two companies operate; and that Joseph Cirese had said, on one occasion, that it would be a happy day for him when he had installed the additional meters and equipment then on hand.

In the case of State ex rel. and to Use of Cirese v. Ridge, *supra*, the supreme court held that, since plaintiff in the injunction case, Kansas City Power & Light Company v. Joseph C. and Mary Cirese doing business as Cirese Power & Light Company, had alleged in its petition that defendants were a public utility, and that since defendants had admitted said allegation by demurrer, the circuit court had no jurisdiction to entertain the complaint until after same had been acted on by the Public Service Commission. The only question there decided was that the circuit court had no jurisdiction to act, in the first instance, in a case which fell within the jurisdiction of the regulatory power of the Public Service Commission.

Appellants urge here that the Commission erred in holding that appellants are, in fact, a public utility and, as such, subject to regulation by the Commission. That is the only point made.

[1, 2] There was ample and substantial evidence to support a finding by respondent that appellants are engaged as a public utility to the extent that they manufacture, distribute and sell electrical energy to members of the public. They are not, however, a public utility in so far as their facilities and activities are confined to the manufacture, distribution, and sale of electrical energy to themselves and to their own buildings and tenants thereof in the manner shown in evidence. State ex rel. Lohman & Farmers Mut. Teleph. Co. v. Brown, 323 Mo 818, PUR1930A 160, 19 SW(2d) 1048, 1049; State ex rel. Danciger & Co. v. Public Service Commission, 275 Mo 483, PUR1919A 353, 205 SW 36, 18 ALR 754.

Appellants contend that it cannot be said that their business is a public utility because their facilities are designed and intended primarily to be used for production of electrical en-

ergy for consumption in their own business, and in buildings owned by them, and that they are merely selling their surplus energy. Whether or not the business of appellants is a public utility depends upon what they actually do. Terminal Taxicab Co. v. Kutz, 241 US 252, 254, 60 L ed 984, PUR1916D 972, 36 S Ct 583, Ann Cas 1916D 765; State ex rel. Lohman & Farmers Mut. Teleph. Co. v. Brown, *supra;* State ex rel. Danciger & Co. v. Public Service Commission, *supra.*

Appellants rely entirely on the Danciger Case, *supra.* The language of the opinion in that decision has been construed in the later case of State ex rel. Lohman & Farmers Mut. Teleph. Co. v. Brown, *supra.* In the light of what is there said it is clear that a corporation, regardless of the limitations of its charter or of its lack of public authority so to do, may actually engage in business as a public utility and, if it does, it will be wholly subject to regulation by the Public Service Commission; or it may devote a part of its property and facilities to private use and a part to public use so as to constitute that part of its facilities and business, so dedicated to public service, a public utility. To the extent that its facilities are devoted to public use, as a public utility, it will be subject to regulation by the Commission, but no further. However, in the Danciger Case, *supra,* it was held that appellant corporation had not, in any sense, engaged in business as a public utility and was, therefore, not subject to regulation by the Commission.

[3] Appellants contend that the facts in evidence in this case are so similar to those shown in the Danciger Case as to require a decision that they are not, in any sense or to any extent, a public utility. This contention cannot be sustained.

In the Danciger Case, *supra* [PUR 1919A at p 361, 205 SW at p 40] it was said that there was no "explicit professing of public service," or holding out by Danciger that its service was available to the public. The effect of that decision is to declare that a profession of public service must appear, either explicitly or implicitly, before a business can be said to be a public utility and, as such, subject to regulation by the Commission. The court held that such fact was not explicitly shown nor could it be deduced from the evidence in that case.

The record in this case is replete with evidence of the personal solicitation of business from places of business and from private homes, and the public solicitation of business, indiscriminately, from any and all sources, through a newspaper article, through handbills, and through the indiscriminate distribution of customers' bills heretofore described. Such evidence is virtually uncontradicted.

But there are other circumstances that tend to prove the nature of the business that was being carried on by appellants. They almost doubled their productive capacity at a time when, it may be inferred from the evidence, they already had ample production to supply the needs of their own buildings and tenants. At about the time this addition to their plant capacity was made they, for the first time,

began soliciting the business of outside customers and began running service lines to properties other than their own. They acquired a large number of meters and large quantities of poles and wire, and Mr. Cirese stated that it would be a happy day when such equipment had been installed and connected. They sought to sell to complainants, for a substantial consideration, all of their facilities not needed for the production and distribution of energy for use in buildings owned by appellants, and announced that if the sale was not made they expected to continue their previous course. It will be remembered that they had but recently acquired this surplus generating equipment. The fact that they proposed to sell it, together with 500 meters (which latter could not reasonably have been needed in buildings owned by appellants) is strong evidence that the surplus energy which, they contend, was all they sought to sell, was not produced as incidental to their operations for their own use, but was deliberately produced for sale to others. The situation thus presented is quite different from that presented in the Danciger Case, *supra.*

From a consideration of the testimony and an examination of the plats depicting the character and location of appellants' properties, the relation of its properties to those of complainant, and the undisputed evidence of what appellants did over a period of years, it can only be said that appellants not only are engaged in producing electricity for their own use and that of tenants of buildings owned by them, but that they are also engaged in the production, distribution, and sale of electricity to the public within the territory of several blocks where their plant and distribution system is located. It follows that the finding of the Commission, to the effect that appellants are engaged in business as a public utility so as to render them amenable to the jurisdiction and regulation of respondent, is fully sustained by the evidence.

In arriving at the foregoing conclusion we have not overlooked appellants' contention that they sold service only on private contract. We think the evidence is sufficient to support a finding to the effect that they held themselves out as willing to sell to all comers who desired service in the immediate vicinity of their plant, a district consisting of several blocks, and that they did sell to all such customers.

The order itself is not challenged except as above stated. The judgment of the circuit court should, therefore, be affirmed.

BOYER, C., not sitting.

PER CURIAM: The foregoing opinion of SPERRY, Commissioner, is adopted as the opinion of the court.

The judgment is affirmed.

BLAND and CAVE, JJ., concur.

SHAIN, P. J., not sitting.

UNITED STATES SUPREME COURT

Southern Railway Company

v.

United States

No. 578
— US —, 88 L ed —, 64 S Ct 869
April 24, 1944

CERTIORARI *to Federal Court of Claims to review a judgment for defendant in action by railroad against United States to recover undercharges; affirmed.*

Rates, § 459 — Freight rates — Rates for government service — Contracts.
Where a railroad, in order to compete with land-grant roads over which the government is entitled to ship at reduced rates, has contracted with the Federal government to ship property for it at the lowest net rates lawfully available as derived through deductions account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission, applying from point of origin to destination at time of movement, it may charge for such transportation only the amount which the government would have to pay for shipment over the cheapest land-grant route, even though that route is so circuitous that shipment thereby would have been improvident and uneconomical.

APPEARANCES: Sidney S Alderman, of Washington, D. C., argued the cause for petitioner; Assistant Attorney General Francis M. Shea, of Washington, D. C., argued the cause for respondent.

Mr. Justice DOUGLAS delivered the opinion of the court: In 1933 petitioner, a common carrier, entered into a "Freight-Land-Grant Equalization Agreement" with the Quartermaster General, acting for the United States. This agreement was made under the authority of § 22 of the Interstate Commerce Act. [February 4, 1887] 24 Stat 379, 387, Chap 104, 49 USCA § 22, 10A FCA title 49, § 22. So far as material here, petitioner agreed to accept for the transportation of property shipped for account of the government of the United States and for which the government of the United States is lawfully entitled to reduced rates over land-grant roads, *the lowest net rates lawfully available, as derived through deductions* account of land-grant distance from the lawful rates filed with the Interstate Commerce Commission applying from point of origin to destination at time of movement. [Italics added.]

From the point of view of the carrier the purpose of the agreement was to give it a portion of govern-

ment business which might have been routed over land-grant routes.[1] Land-grant roads were under an obligation to furnish transportation to the government free of charge or at reduced rates. See Public Aids to Transportation, Federal Coördinator of Transportation (1938), Vol. 2, pp. 3–42 for a review of the various acts of Congress. At the time when this agreement was made land-grant roads were required to allow the United States 50 per cent deductions from the commercial rate for the transportation of property or troops of the United States.[2] [June 7, 1924] 43 Stat 477, 486, Chap 291, 10 USCA § 1375, 11 FCA title 10, § 1375. "Railroads which compete with the reduced-rate lines found themselves unable to participate, not only in the local transportation of Federal troops and property between the termini of the reduced-rate lines, but also in through movements from and to points beyond such termini." Public Aids to Transportation, *supra*, p. 42. Accordingly most of those roads entered into land-grant equalization agreements with the United States in order to get as large a share of the business as possible.[3] See Southern P. Co. v. United States (1939) 307 US 393, 394, 83 L ed 1363, 1365, 59 S Ct 923. The one involved in the present case is an example.

This suit involves 374 shipments of government property over petitioner's lines and its connections made between 1934 and 1938 while this agreement was in force.[4] There were available in case of each shipment several routes between the point of origin and the point of destination. Petitioner's route was in general the shortest. But there were other routes containing land grants of varying percentages which it was possible to use for these shipments. And the rates shown by tariffs on file with the Interstate Commerce Commission for freight shipments between the points in question were the same (with exceptions not important here) for each of the alternative routes regardless of the mileage. Petitioner computed its charges so as to allow the rate reductions to which the United States would have been entitled had it actually made the shipments by one of the available, alternative land-grant routes. The United States, however, claimed greater deductions. It showed a longer and more circuitous route

[1] The court of claims made the following finding in this case: "The purpose and effect of the freight equalization agreements of the defendant with plaintiff and with other common carriers was to equalize rates on government property over various routes serving the same point of origin and destination, where one or more of those routes had been aided in whole or in part by grant of public lands, rates over all routes from point of origin to destination being brought down to the level of that over the route producing the lowest net rate on account of land-grant deduction. This arrangement was designed to give the equalizing carrier a portion of the government business that was possible of routing over the governing land-grant route, and to give the government a greater range in choice of routes where considerations of economy entered into the selection."

[2] But see § 321 of the Transportation Act of [September 18] 1940, 54 Stat 898, 954, Chap 722, 49 USCA § 65, 10A FCA title 49, § 65.

[3] Petitioner's road includes 145 miles of land-grants. But as pointed out in Public Aids to Transportation, *supra*, p. 42, "The land-grant railroads are parties to these agreements for the reason that, in many instances, a non-aided portion of a land-grant railroad competes with a reduced-rate portion of another land-grant railroad."

[4] These consisted of 147 shipments of livestock by the Federal Surplus Relief Corporation from midwestern points to southeastern points; and 227 shipments of property by the Tennessee Valley Authority.

which could have been used[5] and which contained more land-grant mileage than the alternative route chosen by petitioner. Since the tariff rates over either alternative route were the same, the greater land grants included in the route selected by the United States resulted in lower rates than those which were computed on the basis of the land-grant route selected by petitioner. The United States paid the lower rates. Petitioner brought suit in the court of claims for the difference between the amount paid and the rates computed on the basis of the tariffs for the route which it had selected. The court of claims denied recovery. The case is here on a petition for a writ of certiorari which we granted because of the public importance of the problem.

The court of claims found that the circuitous routes on which the United States based its computations could have been used for the shipments in question. But petitioner contends that such an interpretation of the word "available" is unreasonable in the present context and that it should be construed to mean "capable of being employed or made use of with advantage." In that connection, petitioner argues that it would have been improvident and uneconomical to ship livestock on such circuitous routes and that those routes would never in fact have been used by the United States. It is argued, moreover, that the equalization agreement properly construed requires petitioner to equalize rates computed by land-grant routes which are competitive for government traffic. Its purpose, according to that contention, was to secure for petitioner traffic which in its absence would be likely to move over competing land-grant routes, as distinguished from traffic which was possible of routing over the cheapest land-grant route.

We agree, however, with the court of claims. In this context the "lowest net rates lawfully available" mean to us the lowest net rates which could have been obtained on the basis of tariffs on file with the Interstate Commerce Commission. Whether such circuitous routes as were employed in the present computation would have been actually used for these shipments in absence of the equalization agreement is of course unknown. But circuitous routing by the United States in order to obtain the benefits of its earlier land-grants to railroads was apparently a common practice. See Public Aids to Transportation, *supra*, p. 42. The records show that the privilege of obtaining the benefit of rates on land-grant routes is a valuable privilege indeed.[6] We cannot assume that the United States intended to surrender any of those benefits by granting the equalizing carriers more favorable rates than those to which it was lawfully entitled on the land-grant routes, unless the purpose to do so was plainly expressed. It must be remembered that the equalization agreement was a rate-making agreement. Its object was to divert shipments to the nonland-grant

[5] Thus in case of the shipments of livestock the routes on which the United States made its computation of rates were from 137 to almost 700 miles longer than the ones actually used.

[6] See Public Aids to Transportation, *supra*, pp. 43–45; Kenny, Land-Grant Railroads and the Government (1933), 9 Journal of Land & Public Utility Economics 368.

route. The land-grant route was chosen merely for the purpose of computing the rate. The fact that in a given case the shipment probably would not have moved over the land-grant route is immaterial. The United States was bargaining for low rates for the shipment of its property. It did not differentiate between the types of property shipped. It did not in terms state that land-grant routes, though actually available, would not be used in computing the rate unless they would in fact have been convenient or practicable to use for the particular shipment. The standard it prescribes is "the lowest net rates lawfully available." We may not resolve any ambiguities which may linger in that phrase against the United States. Cf. Southern P. Co. v. United States, *supra* (307 US at p. 401). We are not warranted in assuming that the United States was more generous to this carrier than the language of the contract requires. We must assume that the contracting officers for the United States drove as provident a bargain as a reading of the agreement fairly permits.

At times the United States has made equalization agreements which were more favorable to the equalizing carriers than the instant one appears to be. Thus in 1917 a passenger land-grant equalization agreement was made with petitioner and other carriers [7] whereby they agreed to accept the lowest net fare "lawfully available, as derived, through deductions account land-grant distance *via a usually traveled route for military traffic,* from a lawful fare filed with the Interstate Commerce Commission as applying from point of origin to destination via such route at time of movement." (Italics added.) That agreement suggests that when the United States desired to give equalizing carriers more favorable rates than the lowest rates to which it was lawfully entitled on land-grant routes, it chose apt words to express its purpose. It also gives added significance to the omission of any such qualification in the present agreement. It suggests that if we read into the agreement the qualification which the petitioner desires, we would remake the contract.

Much material bearing on administrative construction of various types of equalization agreements has been pressed upon us. But we have not relied on it as we found it inconclusive.

Affirmed.

[7] See Manual for the Quartermaster Corps, 1916 (1917), vol. 2, pp 223, 230.

CONNECTICUT PUBLIC UTILITIES COMMISSION

Re Connecticut Dump Truck Owners' Association, Incorporated

Docket No. 7416-A, Investigation and Suspension No. 21-A
May 2, 1944

INVESTIGATION *of proposed rate increase for motor carrier transportation; rate increase authorized.*

Evidence, § 9 — Judicial notice — Rising cost of service.

The Commission, in authorizing a proposed increase in motor carrier rates, took judicial notice of rising costs in the entire field of motor transportation, especially respecting wages.

By the COMMISSION: On February 3, 1944, the Commission received for filing from Paul J. Goldstein, agent, Supplement No. 30 to Conn. PUC–MF No. 2, Connecticut Dump Truck Owners' Association, Inc., local commodity tariff applying on Bituminous Coal, effective March 10, 1944, containing proposed increases covering the transportation of bituminous coal by motor truck within the state of Connecticut.

Earlier Supplement No. 27 to Conn. PUC–MF No. 2 of said association, was ordered canceled by the Commission on December 7, 1943, in its Docket 7416, after a hearing, without prejudice to future consideration of a new proposal of the Connecticut Dump Truck Owners' Association, Inc. The Commission's finding in its Docket 7416 is discussed below. In a letter to the Commission dated February 8, 1944, a further hearing in that docket was requested.

Under date of February 18, 1944, the Commission suspended the effective date of Supplement No. 30 until May 8, 1944, or until prior order of the Commission, and ordered that a hearing upon the reasonableness and lawfulness of the rates contained in said supplement be held at its office in Hartford on February 28, 1944, and that the related and earlier hearing on Supplement No. 27 to Conn. PUC-MF No. 2, in Commission Docket No. 7416, dated December 7, 1943, be reopened for the receipt of further evidence.

Prior to the assignment of a hearing upon the proposed increases, the Office of Price Administration, on behalf of Prentiss M. Brown, Price Administrator, and on behalf of Fred M. Vinson, Economic Stabilization Director, had filed a request with the Commission, dated February 14, 1944, that Supplement No. 30 be suspended pending a hearing to determine the lawfulness of the rates and charges contained in said supplement.

Notice of the filing of Supplement 30 and of the time and place of the hearing assigned thereon was given by the Commission to the Connecticut Dump Truck Owners' Association, Inc., to the Federal Office of Price Administration, to all dump truck common carriers known to be transporting bituminous coal for hire between points within Connecticut and to other interested parties, and by legal notice in newspapers having a circulation in the cities of New London, Bridgeport, Waterbury, and Hartford, as on file appears. At the time and place stated both the Connecticut Dump Truck Owners' Association, Inc., and the Office of Price Administration appeared by counsel, the former submitting testimony in support of its Supplement No. 30, which testimony is hereinafter summarized and referred to. A further hearing on this matter was held on March 23, 1944, due notice of which was given to the same parties as received notice of the hearing assigned for February 28, 1944. The board of finance and control of the state of Connecticut addressed a letter to the Commission, dated March 23, 1944, which was noted at the hearing held on that date, stating that the state of Connecticut purchases annually approximately 75,000 tons of bituminous coal for use by various state agencies, of which approximately half is delivered by truck. Said state department registered against the approval of an increase in the rates for the transportation of bituminous coal, in view of the resulting increase to the state in the delivered cost of this commodity to its various agencies.

It will help to explain the occasion for the further hearing in this Docket 7416–A by stating first the history of the rates governing the transportation of bituminous coal by motor truck between points within Connecticut and by then referring to the earlier Docket No. 7416 of which the present Docket is an outgrowth.

History of Rates

The rates governing the transportation of bituminous coal by motor common carriers between points within Connecticut, excluding transportation within a town or exempt zone as defined by the Commission, were prescribed by the Commission, after extended hearings, in its Docket No. 6395, dated March 23, 1937, 20 PUR (NS) 65, and, after hearing, in its Docket No. 6395–A, dated June 7, 1937. The basis for the exact rates prescribed therein was a formula prepared by the Commission which was designed to express the reasonable cost per ton for this kind of transportation service (see pages 70, 71 of 20 PUR(NS)).

These rates were slightly amended in Commission's Docket 6395–A dated June 7, 1937, the amendments relating principally to rates for transportation originating at or destined to or passing through Waterbury.

In Docket No. 6395–B, dated June 14, 1940, the exact rates prescribed by the Commission in Dockets Nos. 6395 and 6395–A were fixed as minimum rates and charges for the transportation of bituminous coal by motor common carriers. The Commission in its Docket No. 7209, dated June 26, 1942, authorized an increase of

5 cents per ton of 2,000 pounds upon evidence of increased cost of operation due to wartime conditions.

Action of the Commission in Its Earlier Docket 7416

The Commission received for filing on September 16, 1943, from the Connecticut Dump Truck Owners' Association, Inc., Supplement No. 27 to its tariff Conn. PUC–MF No. 2, to become effective October 20, 1943, containing proposed increases governing the transportation of bituminous coal by motor trucks for hire between points within Connecticut. The Commission suspended the effective date of Supplement No. 27 until December 19, 1943, in its Docket No. 7416 and held a hearing upon the proposed increases on November 8, 1943, after due notice to interested parties, including the Office of Price Administration, which agency appeared by counsel in objection to the increase in rates.

The increases proposed in Supplement No. 27 to Conn. PUC–MF No. 2 ranged from 6 per cent to 315 per cent. At the opening of the hearing on Supplement No. 27, the petitioner amended its Supplement No. 27 by withdrawing the increases proposed therein and by substituting a 20 per cent increase in the minimum rates prescribed by the Commission in its Dockets Nos. 6395, 6395–A and 6395–B and by also applying a 20 per cent increase in the rates for transportation between points within a town or exempt zone, except where the 5 cents per ton of 2,000 pounds authorized by the Commission in its Docket No. 7209 would exceed the proposed increase of 20 per cent. As so amended, the percentage of increase under Supplement No. 27 was the same as is proposed in Supplement No. 30.

The Commission found in part in its Docket No. 7416 that it was "without any accurate information upon which to determine whether the present level of rates is compensatory, and if not, the extent to which any increase in rates is justifiable at the present time" and, further, that the petitioners had not sustained the burden upon them of "offering convincing and reliable evidence in support of their petition." The Commission, therefore, concluded and found "that Supplement No. 27 to Conn. PUC–MF No. 2, as amended at the hearing, should be canceled and it hereby is so ordered, without prejudice to consideration of a new proposal at such time as the petitioners are in a position to sustain the burden of justifying an increase upon reliable evidence of revenues and expenses applicable to the transportation of bituminous coal." The finding of the Commission in its Docket 7416, dated December 7, 1943, is made by reference a part of this finding and order in Docket No. 7416–A.

Hearing on Docket No. 7416–A

The Connecticut Dump Truck Owners' Association, Inc., thereafter filed with the Commission, as stated at the outset of this finding and order, its Supplement No. 30 proposing substantially the same increases to govern the transportation of bituminous coal as were contained in its amended Supplement No. 27 which was canceled by the Commission in its Docket No. 7416, dated December 7, 1943. In filing this latest supplement the pe-

titioner, in a letter to the Commission, dated February 8, 1944, referred to above, stated in part: "In light of the fact that costs of operation for transportation of bituminous coal have risen substantially, it is necessary to obtain an increase in the rates and charges for the transportation of this commodity." Upon this representation and the National Emergency and the offer to submit additional testimony justifying an increase, the petitioner requested that the earlier hearing be reopened, and that Supplement No. 30 be accepted for filing.

In connection with the proposed further hearing, the Commission, in a letter dated January 28, 1944, addressed to counsel for the Connecticut Dump Truck Owners' Association, Inc., outlined to him certain data to be prepared by the petitioners respecting the transportation of bituminous coal which data might be of assistance to the Commission in passing upon rates and charges applying to such transportation, in view of the inadequate financial data presented before the Commission at the earlier hearing on Docket No. 7416.

There are twelve motor common carriers of bituminous coal who are now participants in tariff Conn. PUC–MF No. 2 of Connecticut Dump Truck Owners' Association, Inc., to which Supplement No. 30 applies. They operate sixty-seven motor trucks in the transportation of bituminous coal for hire. Two of the participating motor carriers are not presently transporting bituminous coal and their authorized vehicles are not included in this total.

From the volume of bituminous coal transported by motor carriers for hire, it appears that the three carriers submitting cost figures at the hearing transport approximately 85 per cent of the volume between points within Connecticut. These carriers are Bassetti and Lawson, the Guyott Construction Company, Inc. and L. Ciercielli & Sons. In accordance with the suggestion of the Commission, in its letter of January 28, 1944, addressed to the counsel for the Connecticut Dump Truck Owners' Association, Inc., above referred to, these carriers submitted cost data covering the months of December, 1943, and January and February, 1944. The data submitted represent total revenues and expenses of the carriers allocated to coal hauling and to other traffic from which it appears that the carriers are hauling bituminous coal at a loss.

A study of the data submitted by the three carriers mentioned above with respect to their coal hauling traffic, compared with the experience of Class I Motor Carriers transporting general commodities taken from reports on file with the Commission for the year 1943, indicates that the general average cost per truck mile of repairing revenue equipment for the period covered by their exhibits in the instant case is somewhat greater than the average cost to the Class I carriers for the year 1943.

However, the Commission is aware of and takes judicial notice of rising costs in the entire field of motor transportation, particularly respecting wages which have been occurring since December 7, 1941, and the Commission takes into consideration the general increase in these costs in arriving at its conclusion. An example

is the wage increase recently ordered by the War Labor Board applicable to members of the Dump Truck Owners' Association, Inc., increasing the pay of drivers from 80 cents per hour to ninety cents per hour retroactive to January 17, 1944. Testimony of this was presented at the hearing.

From the testimony presented by these three carriers, it appears that the average pay load being carried by them amounts to about nine short tons or 18,000 pounds. This average is approximately 6 per cent more in pay load than was determined and used in the Commission's formula of 8½ tons in its Docket No. 6395, dated March 23, 1937, *supra,* above referred to. To the extent that the actual pay load exceeds the estimated pay load some additional compensation will be realized by the petitioners.

Representatives of the Federal Office of Price Administration participating in the hearing indicated their opposition to an increase in rates. The Commission is in complete accord with the objective of that office, in its fight against inflation, that no rates or charges should be increased except where made necessary to assure the continued operation of the particular service. The evidence presented in the current case applies to carriers who are responsible for transporting approximately 85 per cent of the bituminous coal moved by motor trucks for hire between points in this state. If this necessary service is to be continued and the public served adequately, it will be necessary to allow the filing of rates which will permit the continued operation of these carriers. Otherwise, there will be no means of assuring the continuation of a service that is vital in the production of goods for national defense.

While the increases requested by the carriers under Supplement No. 30 represent a horizontal increase of 20 per cent over 1937 rates, the actual increases under the proposed rates, classified according to mileage, by comparison with the rates presently in force would vary from a low of 7 per cent, for a haul of 5 miles one way, to a high of 17.8 per cent for a haul of 75 miles one way, this difference being due to the flat increase of 5 cents per ton, authorized by the Commission in its Docket No. 7209, dated June 26, 1942, referred to above.

As stated above, the rates prescribed by the Commission in its Docket No. 6395, *supra,* did not apply to shipments of coal with origin and destination within the limits of any one town or within certain exempt zones stated in the docket. Likewise, the reasonableness of the rates contained in Supplement No. 30 covering the transportation of bituminous coal within the limits of any one town or exempt zones is not determined by the Commission in this proceeding. In this respect reference is made to § 340g of the 1943 Supplement to the General Statutes, which, in amending the Motor Truck Carrier Act, states: "Nothing in this part . . . shall be construed to include the transportation of property for hire having both origin and destination within the limits of any city or town and adjoining territory as the limits of such adjoining territory shall be determined by the Commission. This section shall remain in force until July 1,

1945, from which date said § 236f shall be in effect as if this amendment thereto had not been enacted."

Upon consideration of the evidence presented at the original hearing on Docket No. 7416 and at the rehearing in this Docket 7416–A and from the judicial notice taken by the Commission of the increased costs of operation occurring in this field of transportation service since December 7, 1941, the Commission finds that permission should be and it hereby is given to the petitioner to file with the Commission its Supplement No. 30, covering rates for the transportation of bituminous coal by motor truck between points within Connecticut. Said supplement, as stated above, contains rates effecting increases, which increases, classified according to mileage and compared with the rates presently in force, vary from a low of 7 per cent for a haul of 5 miles one way to a high of 17.8 per cent for a haul of 75 miles one way. This permission shall become effective as of May 8, 1944, and shall remain in force to May 1, 1945, subject to prior review and modification or revocation by the Commission.

In the interim, the members of the Connecticut Dump Truck Owners' Association, Inc., are directed to continue to segregate in their accounting records the revenues and expenses relating to the transportation of bituminous coal from their other trucking operations for hire and to keep these accounting records month by month during the current year 1944 so that the Commission may review from more adequate accounting records than presently exist the revenues and expenses in the transportation of bituminous coal and determine whether the rates contained in Supplement No. 30 should be permitted to remain beyond May 1, 1945.

The order of suspension of the Commission dated February 18, 1944, respecting Supplement No. 30 to Conn. PUC–MF No. 2 is hereby canceled effective May 8, 1944.

We hereby direct that notice of the foregoing be given by the secretary of this Commission by forwarding true and correct copies thereof to parties in interest and due return make.

ARIZONA CORPORATION COMMISSION

Re Bert Anderson et al.

Docket Nos. 9130–V–105, 9125–V–100, Decision No. 14756
April 1, 1944

CITATION *against motor carriers for allegedly operating without Commission authorization; citation dismissed.*

Public utilities, § 48 — Motor carriers — Operation over private highway.

A person hauling logs for compensation under contract with a lumber com-

pany wholly over a private road constructed and maintained by the lumber company, such road not intersecting or touching a public highway at any place and being posted as a private road, is not a public utility and is not required to obtain Commission authorization to furnish such service.

APPEARANCES: G. V. Hays, Secretary, for Commission; Earl Platt for respondents.

By the COMMISSION: On August 11, 1943, Cecil Pelts and Bert Anderson were issued citations by L. L. Tweidell, field inspector, motor vehicle division, and Hollis Yandell, state highway patrolman, directing them to appear and answer to the charge of transporting logs by motor vehicle from the forest to the Southwest Lumber Mills, Inc., hereafter referred to as the Lumber Company at McNary, Arizona, for compensation without having been properly authorized by this Commission so to do. In response to such citation, respondent Pelts appeared on August 16, 1943, in person and by his counsel, Earl Platt of St. Johns, Arizona, and respondent Anderson, being unable to appear in person, entered his appearance through his counsel, Earl Platt, and a hearing was thereupon conducted by Commissioner William (Bill) Petersen.

It was stipulated by and between counsel that the record should show that respondents were hauling logs for the Lumber Company as charged and that they were not certificated carriers. It was also agreed that inasmuch as the facts were identical in the two matters and both were subject to the same construction that the two matters should be joined and that future proceedings should be had upon a consolidated record. The evidence disclosed that respondents were hauling logs under a contract with the Lumber Company. All of the hauling was done over a private road that was constructed and maintained wholly by said Lumber Company and such road was located entirely upon land within the confines of the Apache Indian Reservation, the right of way therefor being held by the Lumber Company under a lease with the Department of Interior. The road leads from the lumber mill to the forest and does not intersect or touch a public highway at any place. It also appeared from the testimony that such road was posted as a private road and that people traveling thereover do so only with the permission of the lumber company.

There is but one question to be determined here; namely, whether an operator of a motor vehicle under the circumstances above cited has subjected himself to the penalty provided for in § 16 of Art. 15 of the Constitution of the state of Arizona by reason of such operation. Section 6 of Art. 15, state Constitution, provides that the Corporation Commission is empowered to make rules and regulations to govern proceedings relating to public service corporations in the absence of rules and regulations prescribed by the law-making body of the state. Rules and regulations were adopted by the Commission relating to the procedure to be had in cases of transportation by unauthorized persons. The Constitution goes further and empowers the

Commission to enforce its rules and regulations by the imposition of fines within the limits prescribed by § 16 above referred to, which provides for a fine of not less than $100 nor more than $5,000.

In 1933 certain statutes were enacted by the legislature relative to the regulations of public highway transportation. Section 66–501 of the 1939 Annotated Code defines a contract carrier of property as any person who is engaged in the transportation of property on any public highway by motor vehicle of property, for compensation, and not included in the term "common carrier." Section 66–507 provides that no contract motor carrier shall operate without first having obtained permission from this Commission so to do. Public highway is defined by statutory enactment to be a public street, alley, road, or thoroughfare of any kind used by the public or open to the use of the public as a matter of right for vehicular travel. It would seem then that the state legislature has confined the operations of a contract carrier such as these respondents to transportation of property for compensation over a public highway, and to that extent, the legislative act is binding. We do not presume to hold and do not hold that the rules and regulations of this Commission are invalidated in their entirety by the passage of the Motor Vehicle Act, but only to the extent of those matters which are legislated upon.

We have had our attention directed to the case of Winkler Trucking Co. v. McAhren (1943) — Ariz —, 133 P(2d) 757. This case did not turn on the question before us here, but rather evolved out of a question relative to the payment of the license tax provided for in § 66–518 of the 1939 Code, which is a tax due from a regularly certificated or licensed carrier and the supreme court, in the Winkler Case, held that when the Trucking Company filed its application for a certificate of convenience and necessity it admitted that its intention was to use the public highway.

No part of respondents' operation for compensation was upon or across a public highway. If the evidence disclosed that either respondent had so much as touched upon a public highway in carrying out the endeavor for which they were compensated, then it would be our duty to find their operations had constituted each of them a public service corporation, but such is not the case. Their trucks never operated in furtherance of their contract with the Lumber Company elsewhere than on the private road above described.

It was further shown that the timber being transported was designed for lumber for use of the United States Army and ecrtainly during a war such as this country is now engaged in is not the proper time to restrict operations of this nature.

It is therefore our opinion that respondents are not in violation of the law relating to contract carriers and we so find.

It is therefore *ordered:* That the citation herein be dismissed and the joint docket closed.

INDIANA PUBLIC SERVICE COMMISSION

City of Gary

v.

Gary Railways, Incorporated

No. 16496
June 2, 1944

PETITION *of city for investigation of passenger rates of local transportation company; tariffs modified to make experimental fares permanent and further investigation ordered to ascertain whether differential existing between fares in different districts is justifiable.*

Rates, § 630 — Temporary tariffs — Repeated filing — Attainment of permanency.

1. Experimental or temporary rates filed over a period of thirteen years on 60-day tariff filings and proven efficacious, both from the standpoint of the public and the transportation company, passed into the realm of permanency, and the tariff should have expunged therefrom the expiration date and references to their experimental character, p. 188.

Rates, § 261 — Uniformity — Local transportation.

2. The fare established for transportation service within the confines of a municipality should be universal in its application unless some unusual situation exists that requires special treatment for a particular area, p. 190.

Discrimination, § 95 — Streetcar and bus fares.

3. Continuance of a wide disparity in relationship between fares within the same municipality would be inconsistent with and would do violence to the statutes governing discrimination and unreasonable preference, p. 190.

Definitions — Experiment — Use in rate schedule.

"Experiment," within the dictionary definition and in relation to experimental or temporary fares, discussed, p. 190.

APPEARANCES: Samuel S. Dubin, City Attorney, Gary, for the city of Gary; Sidney Krieger, Attorney, Gary, for Krieger's Market Tolleston District; Draper & Eichhorn, Attorneys, Gary, for the respondent, Gary Railways, Inc.; Margaret Hartnett, Katharine Patton, Nathan Vann, and Hobart Wiggerly, Gary, for the Common Council of the city of Gary.

STUCKEY, Commissioner: On the 25th day of March, 1944, the common council of the city of Gary, Lake county, Indiana, filed its Resolution No. 745 with the Public Service Commission of Indiana requesting, among other things, that an investigation and review be made of the various passenger rates within the city of Gary, and particularly the 5-cent rates for the purpose of readjusting passenger rates in the Glen Park District.

Thereafter, pursuant to notice

given by publication in the Gary Post Tribune and The Hammond Times, newspapers of general circulation printed and published in the county of Lake, state of Indiana, as provided by the Acts of 1941, Chap 101, § 8, p 255; 1943, Chap 244, § 1, p 686, Burns' Statutes, 54–115, relating to the giving of notice by the Commission, public hearing was held in the city hall of Gary, Indiana, at 10 A.M., Wednesday, April 19, 1944. At this hearing interested parties were present and testified under oath. Additional evidence in the form of exhibits were presented by respondent. They were: [List of exhibits omitted.]

The evidence shows that respondent, Gary Railways, Inc., operates both streetcars and motor-propelled busses within the corporate limits of Gary, as well as between suburban points beyond the corporate limits thereof.

[1] The evidence further shows that in 1931 Gary Railways, Inc., respondent, being hard pressed for sufficient revenue to keep its company in operation, put in effect a temporary rate schedule of 5 cents within certain areas of said city. That it was aware of the fact that workers who were part-time employed were, because of adverse financial circumstances, walking to and from their places of employment because they could not afford to pay a 10-cent fare. That, therefore, the 5-cent zone rates as initially filed with the Commission, and as thereafter continued to be filed for 60-day periods, and in each case being renewed, were continued in effect for the purpose of enabling such workers to avail themselves of the Gary transportation system which served as a factor in the promotion of public use of streetcars and busses.

The evidence further shows that up until a comparatively recent period the outlying districts within the corporate limits of Gary were sparsely inhabited. That it has been within the last few years that certain districts, such as Glen Park, have been built up substantially in various sections where respondent's bus and streetcar lines extend.

The evidence further shows that the 5-cent fare zones are all located within a business and residential district in which most types of commercial enterprises and industries are located. That, however, the residential sections of the 5-cent zones are inhabited principally by the industrial workers of Gary. The evidence also shows that in addition to the 5-cent zones as above included in respondent's tariff, it has in effect another 5-cent fare zone from Broadway at 15th to Taft street, which is not shown in the said tariff.

The statute, being a part of the Public Service Commission Act, as amended, which governs, in part, the petition herein filed in acts 1913, Chap 76, § 57, p 167, Burns' Stats Anno 54–408, reads as follows:

"Complaints—Investigation and hearing. Upon a complaint made against any public utility by any mercantile, agricultural, or manufacturing society or by any body politic or municipal organization or by ten persons, firms, corporations, or associations, or ten complainants of all or any of the aforementioned classes, or by any public utility, that any of the rates, tolls, charges, or schedules or any joint rate or rates in which such

petitioner is directly interested are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice, or act whatsoever affecting or relating to the service of any public utility, or any service in connection therewith, is in any respect unreasonable, unsafe, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the Commission shall proceed, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, measurements, practice, or act, complained of, shall be entered by the Commission without a formal public hearing."

The other applicable statute, under the Motor Vehicle Act, being acts 1935, Chap 287, § 15, p 1412; 1941, Chap 222, § 5, p 693, Burns' 47–1225, subsec. (e), is as follows:

"Any person, organization, or body politic may complain in writing to the Commission that any rate, fare, charge, tariff, classification, rule, regulation, or practice in effect, or proposed to be put in effect by any carrier or carriers subject hereto is, or will be, in violation of any section or sections of this law and when such complaint is made it shall be the duty of the Commission, after due notice to such carrier or carriers complained of to hear such complaining parties and if the Commission shall be of the opinion that any individual or joint rate, fare, tariff, charge, or classification now being made or demanded by any common carrier or carriers subject to this act or by any such common carriers operating in conjunction with common carriers by steam railroads or electric railroads, and/or by water, is, or will be, unjust and unlawful and unreasonable or unjustly discriminatory, or unduly preferential or unduly prejudicial, it shall determine and prescribe lawful maximum or minimum, and maximum and minimum, rates, fares, charges, tariffs, rules, and classifications thereafter to be observed or thereafter to be made effective, or the Commission may, on its own initiative, without complaint, whenever deemed by the Commission to be necessary and desirable in the public interest, establish through routes, joint classifications, joint rates, fares, charges, tariffs, regulations, or practices for the transportation of passengers or property by common carriers by motor vehicle or any such carrier or carriers by railroad, steam, or electric, and/or by water, and to fix the maximum or minimum or the maximum and minimum rates to be charged and the terms and conditions under which such fares and charges shall be applied and the routes to be operated."

The Commission, having considered the evidence of record, arguments and statements of counsel herein, and having made an investigation, finds that the 5-cent fare zones were as of necessity established thirteen years ago for principally two purposes. First: To stimulate riding of streetcars by the industrial workers during the business depression when those people found it was not within their means to pay a fare of 10 cents. Second: The company's revenue had seriously fallen to a point demanding that some means be devised to stimulate its business among the workers, particularly those who were walking

to and from their places of employment. As an experiment, Gary Railways, Inc. turned to the 5-cent fare within certain limitations, as set out in the petition, as a revenue booster.

Those rates must have been eminently successful since they have been filed over this period (thirteen years) on 60-day tariff filings and always designated (quoting from the tariff schedule—Respondent's Exhibit 2)—as follows: "These rates are experimental and are a reduction from our basic fare structure."

Let us digress briefly to set out the meaning of the word "experiment." Webster's New International Dictionary, Second Edition, Unabridged, defines that word as follows: "n. 1. A trial or special observation made to confirm or disprove something doubtful, especially one under conditions determined by the experimenter; an act or operation undertaken in order to discover some unknown principle or effect, or to test, establish, or illustrate some suggested or known truth; proof; as, a *laboratory experiment; social experiments.*

"2. The action of trying or testing, etc. Synonym. Trial (n)1. The action or process of trying or putting to the proof; subjection of a person or thing to a test, examination . . . to determine something in question.

"3. A trying out as an experiment to test the practicability, efficacy, or the like; a temporary and experimental use, application, etc."

It would appear to the Commission that the "experiment" has long since been concluded. The efficacy of the 5-cent fares undoubtedly, both from the standpoint of the public and respondent, have been proved. It seems utterly ridiculous to say that these fares are experimental or temporary. By long uninterrupted usage respondent has shown their efficacy, reasonableness, practicability, and perhaps their soundness. The 5-cent fares have long since, it would appear, passed into the realm of permanency. This is true, notwithstanding the fact that these so-called experimental rates have been filed at regular intervals, bearing an expiration date, this latter practice being a method of tariff compilation permitted by the Commission at the request of respondent. The Commission believes that to permit this practice to continue interminably would not contribute to the stabilization of the rate structure of this company in the city of Gary. Therefore, the Commission concludes that now is the proper time to take a definite course to stabilize that rate structure.

[2, 3] In the rendering of transportation service within the confines of a municipality, it is axiomatic that the fare established should be universal in its application unless some unusual situation exists that requires special treatment for a particular area. The territory embracing the industrial—commercial—residential area of Gary has presented, according to the company's contention, and may still present, such a situation, the presently effective 5-cent cash fare having been in the past, as shown by the evidence and demonstrated by repeated renewal filings of those fares by respondent with the Commission, the apparent solution of the problem.

As already stated, long uninterrupted usage of the 5-cent fare for the described territory has for all practicable purposes given it the status of a permanent fare. It is for this rea-

son, among others, that fares applicable to all other transportation within the corporate limits of Gary should bear a relationship to the 5-cent fare if what on the surface would appear to be a condition of discrimination and unreasonable preference is to be avoided. On page 16 of tariff IRC No. 164, effective May 15, 1936, issued by respondent, and continuing in effect, provision is made for a cash fare of 10 cents, or three one-ride tokens for 25 cents, within the corporate limits of Gary. These fares represent increases of 100 per cent and 66⅔ per cent, respectively, over the cash fare applicable within the industrial area hereinbefore referred to. It would appear to the Commission that a continuance of such a wide disparity in relationship between fares within the same municipality would be inconsistent with and would do violence to those statutes governing discrimination and unreasonable preference, as set out in the Public Service Commission Act, as well as the Motor Vehicle Act, under both of which respondent operates—streetcars being operated under the former and motor vehicles (busses) under the latter.

The Commission, in this connection, finds from the evidence that petitioner charges respondent with discrimination, particularly against Glen Park District, for the reason that respondent has failed and refused to set up a 5-cent fare *within this district* on the same basis as that established in a similar business district wherein the 5-cent fare has been charged since 1931, all within the same corporate limits.

In all fairness, it might be contended by respondent that since the present 5-cent fare permits of no free transfer privileges when the ride extends beyond the 5-cent zones, a charge of 10 cents then being required, such privileges are extended to the rider who lives beyond the 5-cent zones, which thereby places both types of service on the same basis without discrimination or unreasonable preference against the rider who pays 10 cents. However, as previously stated, petitioner contends that other districts likened to separate towns within a city whose citizens must pay 10 cents to ride within such districts, such as Glen Park, being little or no different than those within which the 5-cent zones apply, are therefore the victims of unreasonable preference or discrimination. On one side, it might be said that as between the *industrial worker who resides and is employed in a factory or mill within the 5-cent zones* and the *industrial worker who is employed therein but resides* even though a relatively short distance *beyond such zones* that unreasonable preference or discrimination exists since he must pay the 10-cent fare. The Motor Vehicle Act, § 15, subsec (b), Burns' 47–1225, *supra*, provides:

"It shall be unjust discrimination and unlawful for any common carrier by motor vehicle to make, give, or cause any undue or unreasonable preference or advantage to any particular person, firm, corporation, or locality in connection with the transportation of any persons or property or to subject any particular kind of traffic or particular person or locality to any undue or unreasonable prejudice, delay, or disadvantage in any respect whatever."

The Commission, however, at this time is not ready to make a definite finding as to whether unreasonable

preference, undue prejudice, or discrimination exists in the present fare structure of respondent. But in the conduct of the hearing in this proceeding it appeared to the Commission that a duty under both the Motor Vehicle Act and the Public Service Commission Act rests squarely upon it to ascertain whether the wide differential which exists between the 5-cent rate and the 10-cent fares is justifiable. This determination in the opinion of the Commission can only be arrived at in fairness to all parties involved after further investigation and hearing.

The Commission further finds by examination of its tariff files, in the light of the evidence herein, that respondent's 5-cent tariff IRC No. 360 (PSCI B–124) issued May 18, 1944, should have expunged therefrom the expiration date as embodied in the following provisions at the front page and page three of said tariff: "Expires July 31, 1944, unless sooner canceled, changed, or extended." And at page three: "In effect for a period of two months only: from June 1, 1944, to July 31, 1944." Also the following provisions: "These rates are experimental and are a reduction from our basic fare structure." And further, said tariff should continue in full force and effect pending further investigation, hearing, and order by this Commission. The principal reason, among others, for this, as aforestated, is that the 5-cent rate has long since passed from the experimental stage to that of relative permanency.

The Commission further finds that a detailed audit and examination of the books and records of respondent by the Commission's accounting staff should be instituted at the earliest possible date and carried promptly forward, which examination should cover the 13-year period beginning July 1, 1931, and end July 31, 1944, showing for each year of said period, among other facts and figures, (1) the total over-all revenues and expenses involved in the operation of (a) streetcars, (b) streetcars and busses; (2) the ratio to total gross revenue of the (a) 5-cent fares, (b) 10-cent fares, (c) any or all other fares taken as a whole; (3) what the gross revenue would have been, and would be, under a universal 7-cent fare, four one-ride tokens for 25 cents, and (4) a combination fare of 5 cents within the zones now set up with a 7-cent charge, four tokens for 25 cents, outside of said zones, in lieu of the present 10-cent rate, and such other data as shall be deemed proper.

The Commission further finds that the scope of the petition herein is sufficient to afford ample authority for investigating the entire rate structure of respondent, without going into a detailed property appraisal at this time, although this may be done also under said petition, at any time the Commission may deem necessary. This position is supported by that part, among other parts, of said petition, as follows:

"Now, therefore, be it resolved that the common council of the city of Gary hereby petition the Public Service Commission of the state of Indiana to investigate and review the various passenger rates within the city of Gary, and particularly the 5-cent rates for the purpose of readjusting passenger rates in the Glen Park District."

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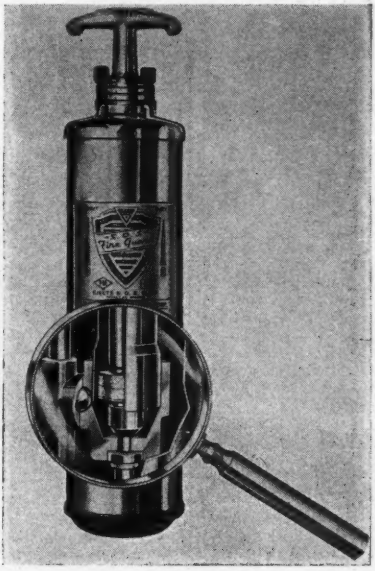

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(*Continued on page* 36)

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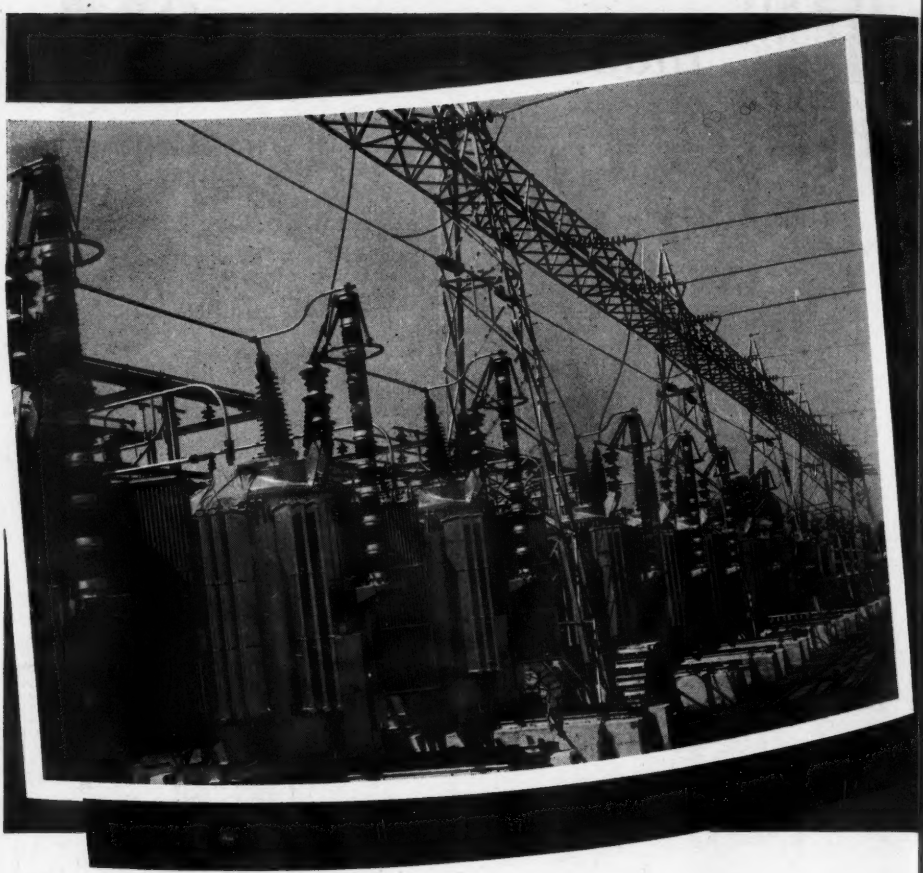

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Samuel Horelick

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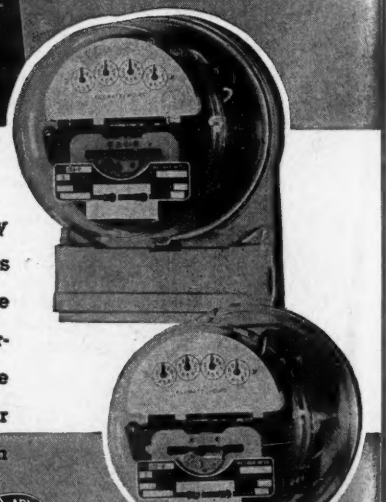

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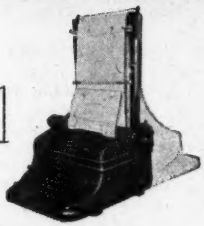

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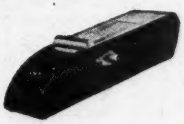

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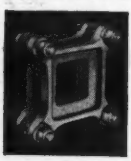

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New Type Floor Matting

A NEW type of matting for use in many places where rubber matting was formerly used has been made available by American Mat Corporation, 1799 Adams Street, Toledo 2, Ohio.

This new product, which is being marketed under the name of Ameritred, is a solid plastic friction type mat made by firmly binding friction compound together by a plastic. It is claimed to be ideal for use in building entrances, lavatories, shower and locker rooms, as hall runners, stair treads and landing mats, on ramps, in front or back of counters, and for covering worn spots on floors.

Copperweld Opens Branch Office

THE Copperweld Steel Company has opened an office at St. Louis, Missouri, in the Railway Exchange Building. Mr. George Hamburger will be in charge. In this assignment he will cover the power, transportation and communication fields in the area comprising the southern half of Illinois and the states of Missouri, Kansas, and Colorado.

Mr. Hamburger was formerly with the Delta Star Electric Company and specialized in the high tension and equipment field. Prior to that he was associated with the Chase Brass and Copper Company and Kennecott Wire & Cable Company as a transmission and cable engineer.

Cement Plant Bulletins

TWO new bulletins describing portable cement plants have just been issued by the C. S. Johnson Company of Champaign, Ill.

Written concisely they summarize operating features, and the uses of each type of plant, together with general specifications.

Copies are available on request.

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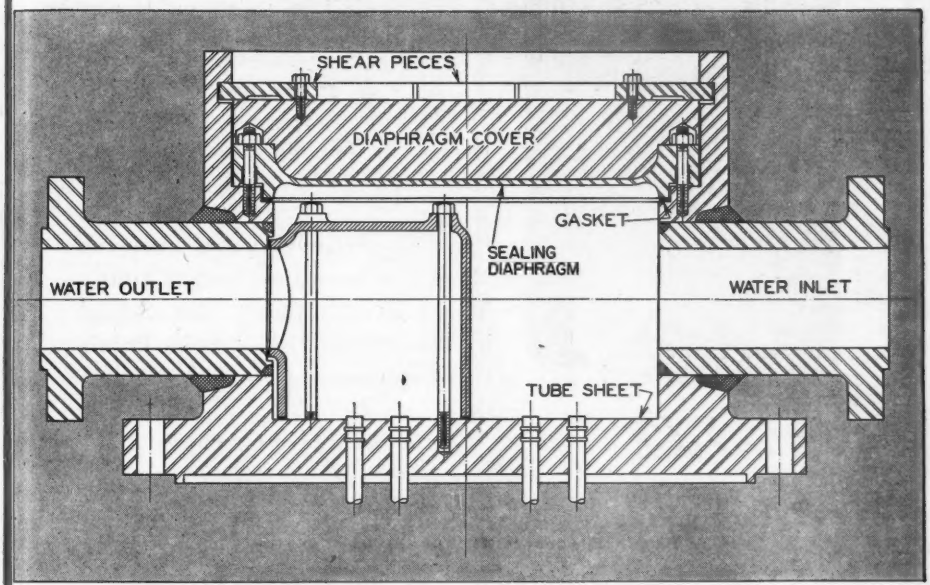
LOCKHEAD CLOSURE



The "Lockhead" closure, developed by Foster Wheeler in 1931, is still the simplest and most efficient design for high pressure heads. Units are operating up to 3200 lb. pressure and range in size to 10 ft. in diameter. Designs are available for conditions exceeding these limits.

Unique advantages of this design are:

1. Pressure load carried by cover block and shear pieces, independent of gasket load.
2. Gasket bolts are independent of pressure load and insure tight main joint regardless of pressure or temperature changes.
3. Entire tube sheet area is completely accessible on removal of cover and diaphragm.
4. Small bolts and simplicity of design facilitate dismounting —ordinary tools are sufficient.

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Foster Wheeler is a Four-Star winner under the U. S. Navy Board of Awards for Production.

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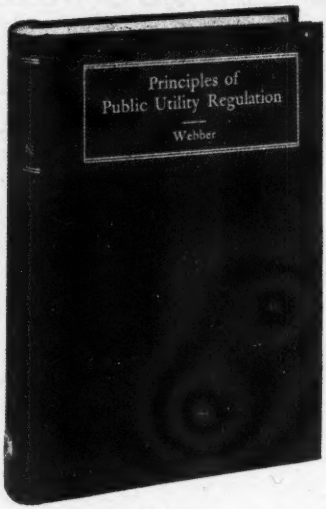

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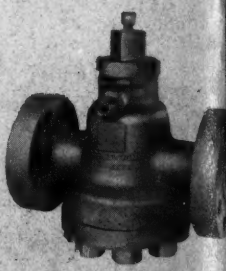

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